61913

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 303

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF ASBURY PARK, COLLECTOR, DEFENDANT.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED JULY 30, 1937

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 203.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY AND ROBERT DAVIS, COLLECTOR THEREOF.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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a New Jersey Court of Errors & Appeals.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Prosecutor, Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY ET AL., Defendants, Defendants in Error.

On Certiorari—Taxes of 1899.

On Error to New Jersey Supreme Court.

Case.

Bedle, Edwards & Thompson, Attorneys of Prosecutor, Plaintiff in Error.

Robert Carey, Attorney of Defendants, Defendants in Error.

b NEW JERSEY, *ss:*

The State of New Jersey to our Justices of our Supreme
[L. S.] Court, Greeting:

Because in the record and proceedings, and also in the giving of the judgment in a plaint which was in our said Supreme Court before you, between the Central Railroad Company of New Jersey, prosecutor, and the Mayor and Aldermen of Jersey City and others, defendants, on a certiorari issued out of our said Supreme Court to the said the Mayor and Aldermen of Jersey City and others, defendants, as is said manifest error hath intervened to the great damage of the said the Central Railroad Company of New Jersey, prosecutor, as aforesaid, as, by its complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you send distinctly and openly under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals before the Judges thereof on the tenth day of February next, and this writ, and that the records and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, this twenty-third day of January in the year one thousand nine hundred and four.

BEDLE, EDWARDS &
THOMPSON, *Attorneys.*
S. D. DICKINSON, *Clerk.*

c The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule in this writ annexed as within we are commanded.

WM. J. GUMMERE, *C. J.* [L. S.]

1 NEW JERSEY, *ss:*

State of New Jersey to The Mayor and Aldermen of Jersey City, and Robert Davis, City Collector thereof, Greeting:

We being willing for certain reasons to be certified of an assessment of taxes made against the Central Railroad Company of New Jersey, for the year 1899, by the Tax Commissioners of Jersey City, in the County of Hudson, on Lot 22, in Block 2154, on Communipaw avenue, whereon the total assessment is one million six hundred and three thousand dollars ($1,603,000), and Lot 1, in Block 1497, New York Bay, whereon the total assessment is seven hundred and seventy-one thousand dollars ($771,000).

We do command you that the said assessment of taxes so made by the Tax Commissioners of Jersey City, together with all things touching and concerning the same, as fully and entirely before you they remain, to our Justice of our Supreme Court of Judicature, at Trenton, on the twenty-third day of July, instant do certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

Witness, David A. Depue, Esquire, Chief Justice of our Supreme Court at Trenton, this third day of July, 1901.

WM. RIKER, JR., *Clerk.*

JOHN L. CONOVER, *Attorney.*

(Endorsed:) This writ is allowed; let it be sealed. Gilbert Collins, Just. Sup. Ct.

2 To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

I, Robert Davis, City Collector of The Mayor and Aldermen of Jersey City, in obedience to the command of the writ hereto annexed, to me directed, do hereby certify and send to you the said Justices the assessment of taxes made by the Tax Commissioners of Jersey City against the Central Railroad Company of New Jersey, for the year eighteen hundred and ninety-nine, upon the property mentioned in the within writ, with all things touching and concerning the same as fully and entirely as the same remains in my hands and possession as by the said writ I am commanded, as appears in the schedule hereunder written.

In witness whereof, I have hereunto set my hand and seal this sixteenth day of July, nineteen hundred and one.

ROBERT DAVIS,
City Collector.

Tax Bill, 1899.

Central Railroad Company of New Jersey to the Mayor and Aldermen of Jersey City, Dr.

Robert Davis, City Coll'r.

For the annual tax, Dec., 1899, to Dec., 1900, assessed for State, School, County and City purposes:

Block.	Lot.	Location.	Value.	Total tax.
2154	22	Communipaw Ave., &c....	$1,603,000	$45,525.20
1497	1	New York Bay.....	771,000	21,896.40

3 *Reasons.*

New Jersey Supreme Court.

CENTRAL RAILROAD COMPANY OF NEW JERSEY, Pros.,
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY ET AL.

On Certiorari—Taxes 1899.

The prosecutor writes down the following reasons for setting aside the taxes brought up for review in this case:

1. Because the property in question has been assessed for taxes at more than its true value.

2. Because the property in question has been assessed for taxes at a higher rate than the other property in the same taxing district.

3. Because nearly all of said property is still situate under the tide waters of New York Bay and never was within the corporate limits of Jersey City, and is not subject to taxation by said city.

4. Because Jersey City had no power to levy said taxes against said property.

5. Because so much of said property as is situate under the tide waters of New York Bay is not subject to taxation by Jersey City or its officers.

4 6. Because the interest of the prosecutors in said property is not subject to taxation by Jersey City.

7. Because said property has not been assessed for taxes by general laws, and by uniform rules, according to its true value.

Dated Nov. 14, 1902.

JOHN L. CONOVER,
Att'y of Pros.
WM. D. EDWARDS,
Of Counsel.

5 New Jersey Supreme Court.

CENTRAL RAILROAD COMPANY OF NEW JERSEY, Prosecutor,
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY ET ALS. Defendants.

On Certiorari.

Depositions taken in the above Cause before William G. E. See, a Supreme Court Commissioner of New Jersey, upon Notice, on Thursday, the fifteenth day of January, Nineteen Hundred and Three, at his office, 15 Exchange Place, Jersey City, New Jersey.

Present: John L. Conover and William D. Edwards, on behalf of the Prosecutor, the Central Railroad Company of New Jersey, and George L. Record on behalf of the defendants, the Mayor and Aldermen of Jersey City.

It is agreed that the testimony may be taken by a stenographer, and the signature of the witnesses to the deposition be waived.

The taxes affected by this Certiorari are as follows:

6

Owner's name.	Line No.	Lot.	Vacant plots.	Value of real estate.	Amount of city tax.	Amount of county tax.	Amount of State school tax.	Total am't of tax.
Central R. R. of N. J.	4	1	k	771,000	15319.77	4525.77	2050.86	21896.40

Block 2154, Communipaw Ave., &c., Jersey City:

Owner's name.	Line No.	Lot.	Vacant plots.	Value of real estate.	Amount of city tax.	Amount of county tax.	Amount of State school tax.	Total am't of tax.
Central R. R. of N. J.	1	22	1	1,603.00	31851.61	9409.61	4263.98	45525.20

It is stipulated on behalf of the parties that the Attorney for the defendant by appearing at this hearing and consenting to the taking of testimony waives no rights of the defendant to have the case brought on for argument at the next term of the Supreme Court, or in default thereof to have the same dismissed in accordance with the stipulation made on the — day of November, 1902, but the defendant shall have further time to take its testimony, if so desired.

EDWARD I. EDWARDS, a witness called on behalf of the Prosecutor, being duly sworn, testifies as follows:

Direct examination by Mr. EDWARDS:

Q. Where do you reside?
A. 242 Harrison avenue, Jersey City, New Jersey.
Q. What is your business?
A. Surveyor of the Tax Board of Jersey City.
7 Q. Are you acquainted with the records and maps relative to assessments for taxes in Jersey City?
A. I am.
Q. Do you have charge of the maps?
A. I do.
Q. And do you know the property known as Lot number 22, Block 2154, and Lot number 1, Block 1497, Jersey City?
A. I do.
Q. To whom does this property belong?
A. To the Central Railroad Company of New Jersey.
Q. The taxes on the property for 1899 are still unpaid?
A. They are.
Q. Were those taxes taken up to the local Board of Commissioners of Appeals?
A. They were.
Q. And with what result?
A. They were confirmed.
Q. And were they then taken before the State Board of Assessors?
A. Yes, and confirmed.
Q. Have you a map showing this property as assessed?
A. I have. (Producing map.)
Q. Is this map a portion of the tax map of Jersey City?
A. Yes, everything that is on the tax map is on that map.
Q. And some additional information?
A. Yes, some additional information.
Q. Take lot 22, block 2154, how many acres are in that tract?
A. Three hundred and ninety-five and one-half acres.
Q. And how far out is that acreage computed?
A. To the exterior line for solid filling.
Q. Has that been the general way in the past of assessing these lands in Jersey City?
A. It has.
Q. What was the condition of that land in 1899, as to improvements and buildings?
A. It was practically all under water—there was no buildings.
Q. How much of this land in 1899 was up-land and how much was land under water?
A. Fourteen and thirty-eight hundredth acres was up-land and three hundred and eighty-one and twenty-two hundredths acres was under water.
8 Q. And that up-land, is that natural up-land, or is it filled in?

A. It is made land.

Q. Was all of this land at one time under the tide waters of New York Bay and below low water mark?

A. Yes, except in one or two places where there may have been some rocks; it was all originally land under water and flowed by the tide, except possibly a portion of the little island which I have marked Black Tom, where the rocks may have been above high water.

Q. In 1899 was the tract which you have marked part of Black Tom connected with the main land?

A. Yes.

Q. How many acres are in the tract of up-land marked Black Tom?

A. Eleven and four one thousandths acres.

Q. I notice a black dotted line running across plot 22 from west to east; what does that line indicate?

A. That is the original division line between the Town of Bergen and Greenville, extended east.

Q. Bergen and Greenville now form part of Jersey City, do they not?

A. Yes, sir.

Q. Bergen was originally north of the line and Greenville south of it?

A. Yes.

Q. How many acres of the three hundred and ninety-five acres in lot 22, block 2154, are in Bergen and how many in Greenville?

A. Sixty-two and twenty-five one-hundredths acres in Greenville, and three hundred and thirty-three and thirty-five one-hundredths acres in Bergen.

Q. The land under water marked lot 22, block 2154, was flowed by the tide in 1899?

A. Yes.

Q. And what depth of water was there at mean low tide?

A. From five feet to two feet running down; the highest place was probably six feet—the deepest portion at low tide was six feet.

Q. And what is the rise and fall of the tide there?

A. The tide rises from four to five feet; the Government gives the mean at four and four-tenths feet.

9 Q. What is the average assessment for taxes per acre on this lot 22, block 2154, including all the area out to the exterior line for solid filling?

A. Four thousand and fifty-one dollars per acre; five thousand dollars per acre for up-land and four thousand dollars per acre for land under water.

Q. Now take the piece of property known as lot number 1, block 1497; in what division of Jersey City is that located?

A. In the Greenville section.

Q. Entirely?

A. Yes.

Q. What is the total acreage?

A. Two hundred and fifty and twenty-one one-hundredths acres.

Q. And of that land how much is land under water and how much up-land?

A. Two hundred and forty-three and seventy-six one-hundredths under water and eight and forty-five one-hundredths up-land.

Q. How about the shore line upon this piece of property, is it the same today as it was originally?

A. It is, except the wash of the tide.

Q. There has been no artificially made land in this piece?

A. It is the same today as it ever was.

Q. What does the up-land consist of?

A. Marsh and very little of good up-land; there was a hill in there.

Q. That is the point formerly known as Caven Point?

A. Yes.

Q. What was this property assessed at per acre in 1899?

A. Three thousand and eighty-one dollars per acre.

Q. Do you know how that piece was figured per acre?

A. The land under water was assessed at three thousand dollars per acre, and the up-land at four thousand per acre.

Q. And is this land flowed by the tide?

A. It is.

Q. And is it of the same general character as plot 22, in block 2154?

A. It is, but there are more rocks in there, at low tide there are more rocks visible.

10 By Mr. EDWARDS: I offer this map in evidence. Marked Exhibit P—1.

Q. Have you a map showing the land under water in New York Bay in New York?

A. I have. (Producing map.)

Q. By whom was that made?

A. By the United States Government.

Q. Where did you get it from?

A. From the Secretary of War.

Q. At Washington?

A. Yes, sir.

Q. And does this map show this property?

A. It does.

Q. And the land under water there?

A. It does.

Q. This plot 1 and plot 22 are the figures for those pieces put upon this map?

A. Yes, they are.

By Mr. EDWARDS: I offer this map in evidence. Marked Exhibit P—4.

Q. This land covered by water is navigable, is it not?

A. For small boats and yachts, but no steam vessels.

Q. And is it so navigated?

A. Yes, it was in 1899.

Q. This applies to both pieces?

A. Yes; people are always fishing there.

Counsel for the Central Railroad Company offers in evidence and refers to the following documents and statutes:

Grant from Charles II, King of England, to Duke of York, dated March 12, 1663-4, Leam. & S. p. 3.

Marked Exhibit P—5.

11 Grant from Duke of York to Berkeley & Carteret, June 24, 1664, Leam. & S., p. 9.

Exhibit P—6.

Letter from Colonel Nicolls to Duke of York, 1665, N. J. Arch., vol. I, p. 46.

Marked Exhibit P—7.

Commission to Governor Carteret, February 10, 1664-5, Leam. & S., p. 26.

Marked Exhibit P—8.

Instructions to Governor Carteret, February 10, 1664-5, Leam. & S., p. 28.

Marked Exhibit P—9.

Grant by Governor Nicolls to Robert Needham, of Bedlow's Island, December 23, 1667, Book of Patents in office of N. Y. Secretary of State, vol. 2, p. 146.

Marked Exhibit P—10.

Grant by Needham to Isaack Bedlow of said island, December 24, 1667, annexed to former grant.

Marked Exhibit P—11.

Grant by Governor Andros to Captain William Dyre, of Ellis Island, 1676, Book of Patents, in office of N. Y. Secretary of State, vol. 4, p. 115.

Marked Exhibit P—12.

12 Patent creating the town of Bergen, 1668. Winfield's History of Hudson County, p. 105, Lib. 1 of Deeds, Patent, Qc., p. 31, in office of Secretary of State.

Marked Exhibit P—13.

Letter from Samuel Mavericks to Lord Arlington, August 25, 1668, N. J. Arch., vol. 1, p. 57.

Marked Exhibit P—14.

Confirmatory grant from Charles II to Duke of York, June 29, 1674, Leam. & S., p. 41.

Marked Exhibit P. 15.

Grant from Duke of York to Carteret, July 29, 1674, Leam. & S., p. 46.

Marked Exhibit P—16.

Quintipartite deed, July 1, 1676, Leam. & S., p. 61.

Marked Exhibit P—17.

Lease from Elizabeth Carteret, *et al.*, to first twelve Proprietors, February 1, 1681-2, N. J. Arch., vol. 1, p. 366.

Marked Exhibit P—18.

Release from Duke of York to twenty-four Proprietors, March 14, 1682-3, Leam. & S., p. 141.

Marked Exhibit P—19.

13 Commission of Duke of York to Governor Dongan, September 30, 1682, N. Y. Col. Docs., vol. 3, p. 328.

Marked Exhibit P. 20.

"An Act to divide the province into four counties," passed in 1682, Leam. & S., p. 229.

Marked Exhibit P—21.

Letter from Duke of York to Governor Dongan, August 26, 1684, N. J. Arch., vol. 1, p. 475.

Marked Exhibit P—22.

"An Act to divide the province and dependencies into shires and counties," passed the 1st of October, 1691, Bradford's Laws of N. Y., p. 39.

Marked Exhibit P—23.

"An Act for dividing each county into townships," passed in 1693, Leam. & S., p. 329.

Marked Exhibit P—24.

Surrender by the Proprietors of the Government of East and West New Jersey and acceptance of the same, Leam. & S., pp. 609 and 617.

Marked Exhibit P—25.

"An Act for dividing and ascertaining the boundaries of
14 all the counties in this province," passed January 21, 1709-10, Rev. of N. J., 1877, p. 198.

Marked Exhibit P—26.

Charter granted by Governor Hunter to the town or townships of Bergen, January 14, 1713-14. Recorded in Liber AAA of Commissions, pp. 154, 155, in office of N. J. Secretary of State.

Marked Exhibit P—27.

Charter by Governor Hunter to the City of Perth Amboy, May 22, 1718, recorded in Surveyor General's office, Eastern Division of N. J., Book C, 2, p. 1.

Marked Exhibit P—28.

Letter from Lewis Morris, President of the Council of New Jersey, to the Lords of Trade, giving the boundaries of New Jersey, November 21, 1719, N. J. Arch., vol. 4, p. 439.

Marked Exhibit P—29.

The Montgomerie charter of the City of New York, granted in 1730, found in New York City Consolidation Act, annotated 1891, by Mark Ash, pp. 892, etc.

Marked Exhibit P—30.

"An Act for confirming unto the City of New York its rights and privileges," passed October 14, 1732, Laws of New York from 1691 to 1751, inclusive, p. 207.

Marked Exhibit P—31.

15 Letter from Governor Crosby to the Lords of Trade, dated August 29, 1733. Documents relating to the Colonial History of New York, vol. 5, p. 936.

Marked Exhibit P—32.

Letter from Lords of Trade to Governor Crosby, August 22, 1734, Lib. vol. 6, p. 16.

Marked Exhibit P—33.

Letter from Governor Crosby to Lords of Trade, December 7, 1734, Lib. vol. 6, p. 24.

Marked Exhibit P—34.

"An Act appointing commissioners for finally settling and determining the several rights, titles and claims to the common lands of the township of Bergen, and for making a partition thereof in just and equitable proportions among those who shall be adjudged by the said commissioners to be entitled to the same," passed 1763, Laws of 1763, p. 66.

Marked Exhibit P—35.

Proceedings of said commissioners in pursuance of said act and supplements, on file in the offices of the clerks of Bergen and Hudson counties, and in the office of the clerk of the Township of Bergen, and published in Winfield's Land Titles.

Marked Exhibit P—36.

"An Act for establishing the boundary or partition line between the colonies of New York and Nova Caesarea or New Jersey,
16 and for confirming the titles and possessions," passed September 26, 1772, Patterson's Laws p. 22.

Marked Exhibit P—37.

The constitution of the State of New York adopted in 1777, Revised Stats. of N. Y., 1829, vol. 1, p. 37.

Marked Exhibit P—38.

"An Act erecting the north ward of Perth Amboy and a part of the township of Woodbridge, in the County of Middlesex, into a city; and for incorporating the same by the name and title of "the City of Perth Amboy," passed December 21, 1784, Paterson's Laws, p. 64.

Marked Exhibit P—39.

"An Act for dividing the State into counties," passed March 7, 1788, 2nd Greenleaf's N. Y. Laws, p. 148.

Marked Exhibit P—40.

"An Act to establish and confirm the charter rights and privileges of the borough of Elizabeth," passed November 28, 1789. Paterson's Laws, p. 84.

Marked Exhibit P—41.

"An Act for altering the wards in the City of New York," passed February 28, 1791, Laws of N. Y., 1789-1796, inc., vol. 3, p. 217.

Marked Exhibit P—42.

17 An ordinance passed by the Common Council of the City of New York, April 20, 1795, Minutes of Common Council of N. Y. for 1795, vol. 11, p. 222.

Marked Exhibit P—43.

"An Act to cede to the United States the jurisdiction of certain islands situate in and about the harbor of New York," passed February 15, 1890, P. L. of N. Y., 1800, p. 7.

Marked Exhibit P—44.

"An Act to increase the number of wards in the City of New York, and to equalize the same," passed March 8, 1803, Webster's Laws of N. Y., vol. 3, p. 225.

Marked Exhibit P—45.

"An Act to amend the charter granted for the incorporation of the freeholders, inhabitants of the township of Bergen," passed March 12, 1806, Laws 1800 to 1806, p. 679.

Marked Exhibit P—46.

"An Act to divide the seventh ward into two wards," passed March 18, 1808, P. L. of N. Y., 1808, p. 58.

Marked Exhibit P—47.

"An Act relative to the jurisdiction of this State over the territory therein mentioned," passed April 6, 1808, P. L. of N. Y., 1808, p. 136.

Marked Exhibit P—48.

18 "An Act to reduce certain laws relating particularly to the City of New York into one act," passed April 9, 1813, Rev. Stats. of N. Y., 1813, vol. 2, p. 342.

Marked Exhibit P—49.

The constitution of the State of New York, adopted in the year 1821, Revised Stats. of N. Y., 1829, vol. 1, p. 54.

Marked Exhibit P—50.

"An Act to equalize and increase the number of wards in the City of New York," passed April 16, 1825, P. L. of N. Y., 1825, p. 286.

Marked Exhibit P—51.

"An Act concerning the territorial limits and divisions, the civil polity, and the internal administration of this State," Revised Stats. of N. Y., 1829, vol. 1, p. 61.

Marked Exhibit P—52.

"An Act concerning the sovereignty and jurisdiction of the State," Revised Stats. of N. Y., 1829, vol. 1, p. 65.

Marked Exhibit P—53.

Section 1, consisting of 14 paragraphs of Title, Chapter 2, Part 1, of the Revised Stats. of New York, 1829, vol. 3, p. 121.

Marked Exhibit P—54.

"An Act concerning the territorial limits and jurisdiction
19 of the State of New York and the State of New Jersey," passed Jan. 18, 1833, P. L. of N. Y., 1833, p. 6.

Marked Exhibit P—55.

"An Act for the settlement of the territorial limits and jurisdiction between the State- of New Jersey and New York," passed February 6, 1833, P. L. of N. J., 1833, p. 54.

Marked Exhibit P—56.

"An Act concerning the agreement entered into by the commissioners appointed by this State and commissioners appointed by the State of New Jersey to settle the boundary line between New York and New Jersey," passed February 5, 1834, P. L. of N. Y., 1834, p. 8.

Marked Exhibit P—57.

"An Act to ratify and confirm an agreement made between the commissioners appointed by the Governor of the State of New York and the commissioners appointed by the Governor of the State of New Jersey, respecting the territorial limits and jurisdiction between said States," passed February 26, 1834, and the agreement therein recited, Rev. of N. J., 1877, p. 1178.

Marked Exhibit P—58.

"An Act giving the consent of Congress to an agreement or compact entered into between the State of New York and the State of New Jersey, respecting the territorial limits and jurisdiction of said States," passed June 28, 1834, U. S. Stats. at Large, vol. 4, p. 808.

Marked Exhibit P—59.

20 "An Act to create the County of Hudson," passed February 22, 1840, Rev. of N. J., 1877, p. 205.

Marked Exhibit P—60.

"An Act to incorporate the City of Perth Amboy," passed February 27, 1844, P. L. 1844, p. 122.

Marked Exhibit P—61.

"An Act to incorporate the town of Bergen," passed March 11, 1862, P. L. of N. J., 1862, p. 162.

Marked Exhibit P—62.

"An Act to create from the town of Bergen, in the County of Hudson, a new township to be called the township of Greenville," approved March 18, 1863, Laws of N. J., 1863, p. 306.

Marked Exhibit P—63.

"An Act to incorporate the City of Bergen," approved March 11, 1868, Laws of N. J., 1868, p. 314.

Marked Exhibit P—64.

"An Act to reorganize the local government of Jersey City," passed March 31, 1871, Laws of N. J., 1871, p. 1094.

Marked Exhibit P—65.

"A supplement to an act entitled 'An Act to reorganize
21 the local government of Jersey City, passed March 31, 1871,"
approved February 4, 1873, Laws of N. J., 1873, p. 203.

Marked Exhibit P—66.

"An Act to consolidate into one act and to declare the special and local laws affecting public interests in the City of New York," passed July 1, 1882, Chap. 410 of the Laws of N. Y., 1882.

Marked Exhibit P—67.

"An Act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors and for other purposes," passed August 11, 1888, U. S. Stats. at Large, vol. 25, pp. 400, 425.

Marked Exhibit P—68.

Consent of the American Dock and Improvement Co. and others that the Central Railroad Co. of N. J. shall receive a grant for certain riparian lands, dated the 6th of November, 1874, and referred to in the above mentioned grant.

Marked Exhibit P—69.

Grant from the Riparian Commissioners of the State of New Jersey to the Central Railroad Co. of N. J., dated May 12th, 1874, and recorded September 27th, 1875, in Register's office of Hudson County, in Book 289 of Deeds, pp. 294, etc.

Marked Exhibit P—70.

22 Counsel for the defendants objects to the offer of the above exhibits as irrelevant, so far as they relate to the statutes of the State of New York, and as action and grants of the officers of said State and province they are not binding upon the State of New

Jersey or its municipalities. This objection, however, is not to the method of proof.

It is admitted that the taxes in question were originally levied for city, county, State and school purposes in the same manner as such taxes were levied upon other properties in Jersey City for 1899.

On Saturday, the seventh day of February, 1903, the examination was resumed in the presence of George L. Record, of counsel for the Mayor and Aldermen of Jersey City, and William D. Edwards, of counsel with the Prosecutor.

It is stipulated between the Counsel of the City and the Counsel of the Central Railroad Company of New Jersey that none of the lands belonging to said Company under water in New York Bay, in this controversy, covered by the taxes in dispute therein, have ever been assessed for taxes by any municipality in the State of New York.

Counsel for Jersey City offers in evidence Chapter 69 of the Laws of 1887 of the State of New York, as contained in the Pamphlet Laws for that year published by authority of the State of New York.

23 Same is marked Exhibit City 1.

Also Chapter 159 of the Laws of 1888 of the State of New York.

Same is marked Exhibit City 2.

Also Chapter 212 of the Laws of the State of New York for the year 1889.

Same is marked Exhibit City 3.

Also offers in evidence joint resolution No. 1 of the State of New Jersey for the year 1888 as contained on page 551 of the Pamphlet Laws of that State for the year 1888.

Same is marked Exhibit City 4.

Also the report and proceedings of the New Jersey Boundary Commission appointed to locate and mark out by stakes and buoys the true boundary line between New York and New Jersey in lands under water in the Hudson River, Bay of New York, Kill von Kull and Arthur Kill or Staten Island Sound under joint resolution City 4. The report under date of December 23, 1889, is marked Exhibit City 5, and the agreement therein set forth of December 23, 1889, is admitted without further proof. The appendix to said report, dated June 3, 1889, is marked Exhibit City 6, and the final report on the boundary line between the States of New York and New Jersey in lands under water in Raritan Bay is marked Exhibit City 7.

The map attached to said report, showing the boundary line in the New York Bay and the Kill von Kull is marked Exhibit City 8,

and the map showing the boundary line between the States

24 of New York and New Jersey in lands under water in the Hudson River annexed to said reports is marked Exhibit City 9.

It is admitted that the commissioners appointed on behalf of the State of New York filed duplicates of said maps and boundaries with the Secretary of State of the State of New York.

Counsel for the City offers in evidence certified copy of bill in equity filed in the Supreme Court of the United States in the year 1829, by the State of New Jersey, complainant, against the State of New York, defendant.

Same is marked Exhibit City 10.

No answer was ever filed to this bill by the State of New York.

Counsel for the City offers in evidence the message from the Governor of the State of New York to the Legislature of the State of New York, dated March 11, 1831, known as Senate Document of 1831, No. 55.

Same is marked Exhibit City 11. (To be supplied.)

Also offers in evidence Chapter 6, page 6, of the Session Laws of the State of New York for the year 1832.

Same is marked Exhibit City 12.

Also offers in evidence the summons and complaint in the action brought by the People of the State of New York against the Central Railroad Company of New Jersey, in the Supreme Court of
25 the State of New York for the First District.

Same is marked Exhibit City 13. (To be supplied.)

Also the answer filed on behalf of the Central Railroad Company of New Jersey in said action.

Same is marked Exhibit City 14.

It is agreed that the final disposition of this case appears in the decision made therein by the Court of Appeals of the State of New York, reported in 42 New York Court of Appeals (3rd Hand) on pages 283, &c.

Said opinion is offered in evidence and marked Exhibit City 15.

Counsel for the City offers in evidence the map referred to entitled "Map showing the boundary line between Jersey City and the City of Bayonne, New Jersey, as monumented, fixed and determined by Egbert Seymour, Henry Lembeck and James F. Minturn, Commissioners appointed for that purpose March 2, 1889, by the Honorable Manning M. Knapp, Judge of the Circuit Court of the County of Hudson, pursuant to an act of the Legislature of the State of New Jersey, approved March 7, 1889, Smith & Weston, Civil Engineers, Bayonne, N. J., December, 1890."

Same is marked Exhibit City 16.

Counsel for the City offers in evidence an Act of the Legislature of the State of New Jersey, entitled, "An Act to consolidate
26 and make into one city, to be called Jersey City, the cities of Jersey City, Hudson and Bergen, in the County of Hudson," approved March 17, 1870, Pamphlet Laws of 1870, page 1170.

Counsel for the City offers in evidence an Act passed on January 28, 1820, Public Laws, of 1820, page 86, entitled "An Act to incorporate the City of Jersey City in the County of Bergen."

Counsel for the City offers in evidence an Act passed by the New Jersey Legislature January 23, 1829, Public Laws of 1829, page 30, entitled "An Act to incorporate the City of Jersey City in the County of Bergen, and to repeal the former Act."

Counsel for the City offers in evidence an Act passed on March 7, 1838, by the Legislature of New Jersey, entitled "An Act to incorrate Jersey City," Public Laws of 1838, page 110.

Counsel for the City offers in evidence an Act passed on March 18, 1851, entitled "An Act to incorporate Jersey City," Public Laws of 1851, page 200.

Counsel for the City offers in evidence an Act passed by the New Jersey Legislature on March 11, 1841, entitled "An Act to set off the Township of Van Vorst in the township of Hudson," Public Laws of 1841, page 113.

On Wednesday, the eleventh day of February, 1903, the examination was resumed in the presence of George L. Record, of
27 Counsel with the Mayor and Aldermen of Jersey City and William D. Edwards, of Counsel with the Prosecutor.

EDWARD I. EDWARDS, being recalled, testifies as follows:

Q. Since the last hearing have you put any additional information or lines upon the map produced at said hearing and marked plaintiff's exhibit 4?

A. I have put in green a line showing the division line between the State of New York and the State of New Jersey, as determined by the Boundary Commission appointed by the State of New York and the State of New Jersey in the year 1888 (P. L. 1888, page 551). I have placed in yellow upon said map a line showing the division line between Jersey City and Bayonne, as determined by the Commission appointed by the Supreme Court under the act of 1889. I have also placed upon said map in black a line showing the division line between the Township of Greenville and the Town of Bergen, as determined by virtue of the authority contained in the Act of the Legislature passed in March, 1863 (Public Laws 1863, page 306), entitled "An Act creating from the Town of Bergen, in the County of Hudson, a new township to be called the Township of Greenville.

Q. How did you ascertain the location of the boundary line between Jersey City and Bayonne?

A. By the map and description of the Commissioners appointed for determining that line and filed in the Clerk's office of Hudson County. I produce a copy of the said map and the said description as the same is on file in the County Clerk's office of the County of Hudson.

Map in question offered in evidence by counsel for the City, and marked defendant's exhibit 16.
28 Description offered in evidence and marked defendant's exhibit 17.

Q. How did you ascertain the location of the division line between the Township of Greenville and the Town of Bergen?

A. By map on file in the Register's office of the County of Hudson, filed by the Surveyor of the Commissioners appointed for that purpose. I produce a copy of said map with field notes attached.

Counsel for the City offers in evidence the said map with field notes attached, which is marked defendant's exhibit 18.

Q. How did you determine the location of the boundary line

shown on this map, plaintiff's exhibit 4, between New York and New Jersey?

A. I located said line from the map and description contained in the report of the said Commissioners.

Q. What other additions have you made to the said map?

A. I have placed upon it, marked in red, the boundaries of the Town of Bergen according to the description shown by the Act of 1855. Public Laws 1855, page 439. I have assumed plotting this description on this map that the boundary of Bergen Township in 1855, extended into New York Bay to the boundary line between New York State and the State of New Jersey, and I have used as such dividing line the boundary between the two States as determined by the Commissioners by their report in the year.

Q. Is it not true that all of the property between the line shown on this map, plaintiff's exhibit 4, as the boundary line between Jersey City and Bayonne on the south and the line of the Jersey Central Station on the north, has been assessed by Jersey City since 1873 when Greenville was incorporated into Jersey City?

A. It was not the practice of Jersey City to assess any land under water until the same had been granted by a lease or grant
29 from the Riparian Commissioners. The land under water in the territory embraced in your question was owned by the State of New Jersey unless it had been granted by the State through the Riparian Commissioners or otherwise. All of the land under water which was embraced in such grants or leases in the territory within the limits mentioned in your question has been assessed and taxed annually by Jersey City from the date of the respective grants or leases.

Q. What tracts to your knowledge have been so assessed and for how long?

A. The Point Breeze piece since 1880. The Morris and Cumings Dredging Company tract since 1885. The New Jersey Warehouse and Guarantee Company piece since 1884. The Livermore and Blair piece since 1884. Central Railroad, most southerly piece (one of the pieces in question) since 1884. The National Storage Company tract since 1884. Central Railroad, the northerly tract (one of the tracts in question) since 1884.

Q. Have those taxes been paid?

A. The taxes on the two pieces in question in this suit, owned by the Central Railroad, have been paid from the year 1884 until the assessment of the taxes in question in this suit. The taxes on the Point Breeze piece have not been paid. The taxes on the Morris and Cumings Dredging Company piece have not been paid. The taxes on the New Jersey Warehouse and Guarantee Company piece have been paid for the years previous to 1891. The taxes on the Livermore and Blair piece have been paid for the years previous to 1893. The taxes on the National Storage Company piece have been paid for the years previous to 1901. As to the taxes which have not been paid by these people, they are in the hands of the Commissioners of Assessment appointed under the Martin Act, to which Commission these taxes were referred upon the application of the taxpayers in question, and are still pending before the said Commission.

30 MAY 27TH, 1903.

JOHN C. PAYNE, being duly sworn according to law, on his oath says, on behalf of the City:

By Mr. RECORD:

Q. You are a civil engineer?

A. Yes, sir.

Q. I have requested you to make a map to aid in the presentation of this cause to the Court; have you made such a map?

A. I have.

Q. Will you produce and explain the map which you have made?

Witness produces map and says:

This map shows the lower end of New York City, part of Brooklyn, the East River, Governor's Island on the south side of New York Bay, and on the north side of New York Bay it shows Bedloes and Ellis Islands; it shows Jersey City and part of Bayonne City; to the west it shows the Hackensack River, Newark Bay and the Passaic River. Upon the map is shown, in lines shaded pink, the two tracts of property involved in this suit; these tracts are inscribed "Grant by State of N. J. to C. R. R. Co. of N. J. 1874, Liber B, 275, 1st tract—Grant by State of N. J. to Am. Dock & Impt. Grant by State of N. J. to C. R. R. Co. of N. J. 1874, Liber B, p. 275, 2nd tract." Upon this map are various boundary lines which have been taken from the descriptions contained in various laws of the State of New Jersey, as follows:

(1) Boundary line between New York and New Jersey, 1833, located under Act of 1888, p. 551.

(2) North line of Jersey City, laws of 1851, page 392.

(3) South line of Jersey City, laws of 1851, page 392.

(4) *a* North line of Town of Bergen, laws 1855, p. 439.

31 *b* North line of City of Bergen, laws 1868, p. 314.

(5) *a* Dividing line between Township of Greenville and Town of Bergen, Act of 1863, p. 306.

b South line of City of Bergen, laws 1868, page 314.

c South line of Jersey City, laws 1869, p. 1377.

d South line of Jersey City, laws 1870, p. 1170.

e South line of Jersey City, laws 1871, p. 1094.

(6) *a* North line of Township of Bayonne, laws 1861, p. 454.

b Dividing line between Jersey City and Bayonne, Act of 1889, p. 46.

c South line of Town of Bergen, laws 1855, p. 439.

d South line of Town of Bergen, laws 1862, p. 162.

e South line of Jersey City, laws 1873, p. 203.

The map al-o shows Myrtle avenue, which is the boundary line between the former Township of Greenville and the former city and town of Bergen; also the Morris Canal as the boundary line between the city of Bayonne and the city of Jersey City; also the Newark and New York Railroad, branch of the Central Railroad Company; also Harsimus or Mill Creek as it formerly existed; also the New Jersey Railroad, which is now the Pennsylvania Railroad; it also shows the

Newark Turnpike leading from Jersey City to Newark, and the Newark Plankroad, leading from Jersey City to Newark.

Map produced by witness is offered in evidence and marked Exhibit City 19.

Substance of Exhibits offered on the part of the Central Railroad Company of New Jersey and the American Dock and Improvement Company.

32 (Exhibits 1, 3 and 4 are maps. Exhibit 2 is same as 27.)

EXHIBIT 5.

Grant from Charles II to Duke of York, March 12, 1663-4.

Leaming & Spicer, page 3, &c.

"Charles the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To all to whom these presents shall come, greeting: Know ye, that we for divers good causes and considerations us thereunto moving, have of our especial grace, certain knowledge and meer motion, given and granted, and by these presents for us, our heirs and successors, do give and grant unto our dearest brother JAMES, Duke of York, his heirs and assigns, all that part of the main land of New England, beginning at a certain place called or known by the name of St. Croix, next adjoining to New Scotland in America; and from thence extending along the sea coast unto a certain place called Petuaquine or begg pardon. Neither can I suppose that My Lord Berkeley or Sir G. Carterett know how prejudiciall Pemaquid, and so up the river thereof to the farthest head of the same as it tendeth northward; and extending from thence to the river of Kenebeque, and so upwards by the shortest course to the river of Canada northward. And also all that Island or Islands, commonly called by the several name or names of Matowacks or Long Island, scituate, lying and being towards the west of Cape Codd and the Narrow Higansetts, abutting upon the main land between the two rivers there called or known by the several names of Connecticut or Hudson River;

33 together also with the said river called Hudsons river, and all the lands from the west side of Connecticut, to the east side of Delaware Bay. And also all those several islands called or known by the names of Martin's Vineyards and Nantukes or otherwise Nantukett; together with all the lands, islands, soiles, rivers, harbors, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings and fowlings; and all other royaltys, profits, commodities, and hereditaments to said several islands, land and premises belonging and appertaining, with their and every of their appurtenances; and all our estate, right, title, interest, benefit, advantage, claim and demand of, in or to the said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders; together with the yearly and other the rents, revenues and profits of all and singular the said premises, and

of every part and parcel thereof; to have and to hold all and singular the said lands, islands, hereditaments and premises, with their and every of their appurtenances, hereby given and granted, or herein before mentioned to be given and granted unto our dearest brother JAMES, Duke of York, his heirs and assigns forever; to the only proper use and behoof of the said JAMES, Duke of York, his heirs and assigns forever."

EXHIBIT 6.

Grant from James, Duke of York, to Berkley and Carteret, June 24, 1664.

Learning & Spicer, pages 9, &c.

"Now this Indenture witnesseth, that his said Royal Highness JAMES, Duke of York, for and in consideration of a compe-
34 tent sum of good and lawful money of England to his said Royal Highness JAMES, Duke of York, in hand paid by the said John Lord Berkley and Sir George Carteret, before the sealing and delivery of these presents, the receipt whereof the said JAMES, Duke of York, doth hereby acknowledge, and therefore doth acquit and discharge the said John Lord Berkley and Sir George Carteret forever by these presents, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said John Lord Berkley and Sir George Carteret, their heirs and assigns for ever, all that tract of land adjacent to New England, and lying and being to the westward of Long Island, and Manhitas Island, and bounded on the east part by the main sea, and part by Hudson's river, and hath upon the west Delaware bay or river, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware bay; and to the northward as far as the northermost branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crosseth over thence in a strait line to Hudson's river in forty-one degrees of latitude; which said tract of land is hereafter to be called by the name or names of New Caesera or New Jersey; and also all rivers, mines, minerals, woods, fishings, hawking, hunting, and fowling, and all other royalties, profits, commodities and hereditaments whatever, to the said lands and premises belonging or in any wise appertaining; with their names and every of their appurtenances, in as full and ample manner as the same is granted to the said Duke of York by the before-recited Letters Patents; and all the estate, right, title, interest, benefit, advantage, claim and demand of the said JAMES, Duke of York, of, in, or to the said —— and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof."

35 EXHIBIT 7.

Letter from Colonel Nicols, Governor of New York, to the Duke of York, 1665.

N. J. Arch., Vol. 1, p. 46, no Date Given.

(Fragment.) "I must now descend to the particular occasion of giving Your R. H. this trouble, wherein My Ld. Berkely and Sr. G. Carterett are concern'd, who, (I know also) will be so just to mee as to have mee excus'd for manifesting clearly my knowledge to Your Rl. Hs. About 10 dais past Cap: Bollen shews mee a letter from my Ld Berkeley and Sr. G. Carterett and therewith a grant from your Rl Hs to them for all the lands to the West of the Hudsons River as more fully may appeare in the said graunt, wherein is comprehended all the improveable part of Your Rl Hs his Pattent and capable to receive twenty times more people than Long Island and all the remaining Tracts in Your Rl Hs his patent in respect not onely to the quantity of the Land but to the sea Coast and Delaware River the fertility of the soyle the neighborhood to Hudsons River, and lastly the faire hopes of Rich mines, to the utter discouragement of any that shall desire to live under Your Ry Hs his protection. In short, I hold myself oblig'd to give Your Rl Hs this account upon certaine knowledge having exactly considered and preferred the advance of Your Rl Hs his reputation and interest in these parts above all considerations or obligations whatsoever, and for my boldness I can at last but such a graunt would prove to Your Rl Hs, but I must charge it upon Capt. Scott who was borne to make mischiefe as farre as he is credited or his parts serve his. This Scott (it seems) aim'd at the same patent which your Rl Hs hath, and hath since given words out that hee had injury
36 done him by Your Rl Hs, whereupon he contriv'd and betrayed my Ld Berkeley and Sir G. Carterett into a designe (contrary to their knowledge) of ruining all the hopes of increase in this Your R. Hs his territory, which hee hath fully compleated, unless Your Rl Hs take farther order herein. Upon this tract of land several new purchases are made from the Indians since my coming, and three Townes beginning; I gave it the name of Albania, lying on the west of Hudsons River, and to long Island the name of Yorkeshr as to this place, the name of N. Yorke to comprehend all the titles of Your Rl Hs. Farre be it from mee to aggrivate any thing beyond the bounds of a faithful servant, for when it may conduct most to your Rl Hs his service, I shall as freely surrender up all parts to Your Rl Hs his pleasure as it becomes me to doe. I presume farther to propose a better and more entire tract of Land worthy of great consideration to My Ld Berkeley and Sir G. Carterett, which is that part of Delaware River, which is reduct from the Dutch, if it is not already disposed, if soe than that my Ld B & Sr. G. C. may have a hundred thousand acres all along the sea coast, which is a most noble Tract of land, but it will cost

them 20,000 lbs. before it will yield a penny, and their childrens children may reap the profitt, great have been the abuses of false reports, whereof I am now fully satisfied, and yet I hope to render a satisfactory account to Your R. Hs by word of mouth, when it shall please Your R. Hs to give mee Liberty, and that your affaires here are upon such a foundation as will not be shaken by my absence, for the present so it is that every short removall of mine produces ill Effects, and in plaine words the Towne & Country cry out they will leave their dwellings if they can not stay mee from going to Boston, such are their apprehensions of a Dutch invasion."

37 EXHIBIT 8.

Commission to Governor Carteret, February 10, 1664-'5.

Leaming & Spicer, Page 26.

"We do hereby constitute and appooint you (during our will and pleasure) Governor of all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitan's Island, and bounded by the east, part by the main sea and part by Hudson's River; and having upon the west Delaware Bay, and to the northward as far as the northermost branch of the said bay or river of Delaware, which is in forty one and forty degrees of lattitude, crossing over thence in a straight line to Hudson's river in forty one degrees of lattitude, now commonly called by the names of New Caesarea or New Jersey; and of all the islands, inlets, rivers and seas within the said bounds of our said province; with power to nominate and take unto you twelve able men at most, and six at least, to be of your council and assistance, or any even number between six and twelve, unless we have before made choice of, or shall choose all, or any of them."

EXHIBIT 9.

Instructions to Governor Carteret, February 10, 1664-5.

Leaming & Spicer, Page 28.

"To our trusty and well beloved Philip Carteret, Esq.,
38 governor of all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitans Island and bounded on the main sea, and part by Hudson's river, and having upon the west Delaware bay or river, and extending southward to the main ocean as far as Cape May, at the mouth of Delaware bay; and to the northward as far as the northermost branch of the said bay or river of Delaware which is in forty one degrees and forty minutes of lattitude; and crosseth over thence in a strait line to Hudson's river in forty one degrees

of lattitude, now commonly known by the name or names of New Casarea, or New Jersey; and of all the islands, inlets, rivers and seas within the said bounds of our said province, and to our trusty and well beloved councillors and assistants to our said Governor, greeting."

EXHIBIT 10.

A Patent Granted to Captn. Robert Needham for an Island Called Oystr. Island.

"Richards Nicolls Esqr &c. Whereas there is a Certaine Island with in this Governmt lying & being in Hudsons Ryver to ye West of Long Island between Nutten Island & ye maine & about South South West from this ffort com'only called & knowne by ye Name of ye Great Oystr. Island it being the biggest of ye three small Islands which lye there neare or adjacent one to Another to wch. sd. Island there appeares not to be any pticuuller Lawfull owner, either natives or others who have just title or do lay claime unto ye same Now Know ye that by vertue of ye Com'ission & Authority unto me given by his Royal Highnesse upon whom by
39 graunt & patent from his Ma'tie the propriety & Governmt. of Long Island & of all ye Islands adjacent (amongst other things) is setled & Confirmed for divers good causes & Considera-c'ons me thereunto moving, I have given, Ratified Confirmed & Graunted and by theise pr'sents do give Ratifye Confirme & Graunt unto Captn. Robert Needham ye sd. Island com'only called ye Great Oystr. Island Scituate & being as aforesaid together wth. all ye Profitts Comodityes & Emoluments to ye said Island belonging or in any wise apperteyning, To have & to hold &c, The Patent is dated ye 23rd of December, 1667."

Book of Patents in office of N. Y. Secretary of State, vol. 2, p. 146.

EXHIBIT 11.

"I Doe by theise pr'sents transport & make over all my right title & Interest to ye wth. in menc'oned Island called great Oystr. Island unto Mr. Isaack Bedlow for wch. I doe acknowledge to have received of him full Satisfacc'on. In Witness Whereof I have hereunto put my hand this 24th day of Decembr. 1667."

Book of Patents in office of N. Y. Secretary of State, vol. 2, p. 146.

EXHIBIT 12.

A Confirmac'on of Little Oyster Island, Granted Unto Captain William Dyre.

"Edmond Andros Esqr. &c. Whereas there is a Certaine small Island commonly called little Oyster Island lying Westward
40 of this Island and City of New Yorke and North East from Great Oyster Island or Lone Island over against Communi-

paw the which hath been Certifyed unto mee not to belong unto any Particular Person And Capt William Dyre having requested my Graunt of the sd Island unto him to make Improvemt. thereon Know Yee That by vertue of the Commission and Authority unto mee Given by his Royal Highnesse I have Given and Graunted and by these presents do Give and Graunt unto Capt. Will'm Dyre his Heires and Assignes the afore recited Island with all and singular the Appurtenances To have and to hold the said Island and Premisses unto the said Capt. Will'm Dyre his Heires and Assignes unto the proper use and behoofe of him the said Capt. Will'm Dyre his Heires and Assignes forever hee making Improvement on the said Island according to Law and continuing in Obedience and Conforming himselfe according to the Lawes of this Government And yielding and Paying therefore yearly and every yeare unto his Royall Highnesse use as a Quitt Rent — — — — — unto such Officer or Officers in Authority there as shall be empowered to receive the same. Given under my Hand and Sealed with the Seale of the Province in New York this — — — — day of — — — in the — — — — years of his Ma'ties Reigne Annoq. Domini 167 — —.

E. ENDROS."

Book of Patents in office of N. Y. Secretary of State, vol. 4, p. 115.

EXHIBIT 13.

Charter Granted by Governor Carteret to the Town and Freeholders of Bergen, September 22nd, 1668.

41 Book 1 of Deeds, Patents, &c., p. 31, in Office of Sec't'y of State; Winfield's History of Hudson Co., p. 105.

"This Deede Witnesseth of Charter granted to the Towne and Freeholders of Bergen, and to the Villages and Plantations thereunto belonging, cituated and being in the province of New Cesarea or New Jersey: By Honble Capt. Philip Carteret, Esqr., Governour of the said Province, and his counsil, under the Right Honble John Lord Berkly, Barron of Stratton, and Sr. George Carteret, Knt. and Baronet, the absolute Lords Proprietors of the same, Containing the Limitts and bounds of the Jurisdiction of said Towne, togethere with the immunities and Priviledges thereunto belonging and appertaining, as followeth: Imprms. The Bounds and Limitts of the aforesaid Towne and Corporation of Bergen is to begin at the North end thereof, from a place called Mordavis Meadow, lying upon the west side of Hudson's river, from thence to run upon a N. W. lyne by a three rail fence that is now standing to a place called Espatin, and from thence to a little Creek surrounding N. N. W., till it comes into Hackinsack river, containing in Bredth from the top of the Hill, 1½ miles or 120 chains, from thence it runs along the said Hackinsack river upon S. S. W. lyne till it comes to the point

or neck of Land that is over against Statten Island and Shooter's Island in Arthur Cull Bay, containing in length about twelve miles, from thence to run Eastward along the River called Kill van Cull that parts Statten Island from the Maine to a point or neck of land called Constable's Point or Constable's houck, and from thence to run up northward all along the Bay up into Hudson's river till it comes to Mordavis Meadow aforesaid; So that the whole tract of upland and Meadow property belonging to the Jurisdiction
42 of the said Town and Corporation of Bergen is bounded at the north end by a tract of Land belonging to Captn. Nichs. Verlett and Mr. Samuel Edsall. On the East side by Hudson's river, on the South end by the Kill van Cull, that parts Statten Island and the Maine, and on the West by Arthur Kull Bay and Hackinsack river, as it is more plainer demonstrated by a draught thereof, made by the Surveyor-General, hereunto annexed."

Exhibit 14.

Letter from Samuel Mavericke to Lord Arlington, N. J. Arch., Vol. 1, p. 57.

"New Yorke in America, *August 25th*, 1668.

Right Honble.:

(Extract) * * * Shortly after ye reduceing of these parts from under the Dutch to his Ma'ties. obedience, the Lord Jno. Berkeley and Sir George Carterett sent over hither to take possession of a certain tract of land granted to them by His Royal Highness out of his patent, which hath proved very prejudiciall to this place and government. Their Bounds reach from the East side of Delaware River to the West side of Hudson's river including a vast tract of the most improveablest land within His Royall Highness his patent. It hath taken away some Dutch villages formerly belongging to this place and not above three or foure miles from it; the Duke hath left of his patent nothing to the West of New Yorke, and to the East upon the Mayne about sixteen miles only from Hudsons River whereon is but one poore village, Long Island is very poore and inconsiderable, and beside the Citty there are but two Dutch townes more, Sopus and Albany, which lye up North
43 on Hudsons river. I suppose when ye Lord Berkeley had that grant, it was not thought he should come so neare this place, nor were ye inconveniencves of it known or considered.

I shall not trouble yor Lord'p with further relation of matters here, since Coll Nicolls can give you full and particular satisfaction both in this or any thing else relateing to these parts.

Your Lordsps
Most humble servant,
SAMUEL MAVERICKE."

EXHIBIT 15.

Second Grant from Charles II to Duke of York, June 29, 1674.

Leaming & Spicer, page 41.

"CHARLES the Second, by the Grace of God King of England, France and Ireland, Defender of the Faith, &c. To all to whom these presents shall come greeting: Know ye that for divers good causes and considerations, have of our special grace, certain knowledge, and meer motion, given and granted, and by these presents for us, our heirs and successors, do give and grant unto our dearest brother JAMES Duke of York, his heirs and assigns, all that part of the main land of New England, beginning at a certain place called or known by the name of St. Croix, next adjoining to New Scotland in America; and from thence extending along the sea coast unto a certain place called Petaquine or Pemaquid, and so up the river thereof to the furthest head of the same as it tendeth northwards, and extending from the river of Kenebeque, and so upwards
44 by the shortest course to the river Canada northwards. And all that island or islands, commonly called by the several name or names of Matowacks or Long Island, scituate, and being towards the west of Cape Codd and the Narrow-Higansetts, abutting upon the main land between the two rivers there, called or known by the several names of Conecticut and Hudsons river; together also with the said river called Hudsons river, and all the land from the west side of Connecticut river, to the east side of Delaware bay."

EXHIBIT 16.

Second Grant of Duke of York to Carteret, July 29, 1674.

Leaming & Spicer, page 16.

"Now this indenture witnesseth, that his said Royal Highness JAMES Duke of York, for and in consideration of a competent sum of good and lawful money of England to His Royal Highness in hand paid by the said Sir George Carteret, before the ensealing and delivery of these presents, the receipt whereof his said Royal Highness JAMES Duke of York, doth hereby acknowledge, and hereof doth acquit and discharge the said Sir George Carteret, his heirs and assigns for ever by these presents, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said Sir George Carteret, his heirs and assigns for ever, all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east part by the main sea, and part by Hudson's river, and extends southward as far as a certain
45 creek called Barnegatt being about the middle, between Sandy Point and Cape May, and bounded on the west in a

strait line from the said creek called Barnegat, to a certain creek in Delaware river, next adjoining to and below a certain creek in Delaware river called Renkokus Kill, and from thence up the said Delaware river to the northermost branch thereof, which is in forty one degrees and forty minutes of latitude; and on the north, crosseth over thence in a strait line to Hudson's river, in forty one degrees latitude."

EXHIBIT 17.

Quintipartite Deed, July 1, 1676.

Leaming & Spicer, pages 61, 67.

This deed releases and conveys "unto Sir George Carteret, his heirs and assigns forever, all that easterly part, share and portion, and all those easterly parts, shares or portions of the said tract of land and premises so granted and conveyed by his Royal Highness the said JAMES Duke of York, unto the said John Lord Berkeley and Sir George Carteret as aforesaid, extending eastward and northward along the sea coast and the said river called Hudson's river, from the east side of a certain place or harbour lying on the southern part of the same tract of land, and commonly called or known in a map of the said tract of land, by the name of Little Egg Harbour, to that part of the said river called Hudson's river, which is in forty-one degrees of latitude, being the furthermost part of the said tract of land and premises which is bounded by the said river, and crossing over from thence in a strait line, extending from that part
46 of Hudson's river aforesaid to the northermost branch, or part of the before mentioned river called Delaware river, and to the most northerly point or boundary of the said tract of land and premises, so granted by his said Royal Highness JAMES Duke of York, unto the said Lord Berkeley and Sir George Carteret, now by the consent and agreement of the said parties to these presents, called and agreed to be called the north partition point, and from thence, that is to say, from the said northern partition point extending southward by a strait and direct line, drawn from the said north partition southward thro' the said tract of land, unto the most southerly point of the east side of Little Egg Harbour aforesaid."

EXHIBIT 18.

Lease from Elizabeth, Widow of Sir George Carteret, and His Trustees to the First Twelve Proprietors of East Jersey.

N. J. Arch., Vol. 1, p. 366.

"This indenture, made the first day of february in the four and Thirtieth yeare of the Raigne of our Soveraign Lord Charles the second by the Grace of God of England Scotland ffrance and Ireland King Defender of the faith &c Annoq Domini 1681 Between the

Right Honble. Dame Elizabeth Carteret the Relict and sole Executrix of the last Will and Testament of the Right Honoble. Sr. George Carteret Knight and Baront. Deceased," and others, "of the one part, and William Penn," and others, "of the other part, Witnesseth," etc., that the said party of the first part "Have Granted Bargained and sould, and by these presents do Grant, Bar-
47 gain and Sell to the said William Penn * * * that whole and entire tract of land in America heretofore called New Caesarea or New Jersey Extending Eastward and Northward along the sea Coasts and a Certain River called Hudsons River from the East side of a certain place or Harbour lying on the southerne part of the same Tract of Land (and com'only called or Known in a Mapp of the said Tract of land) by the name of Little Egg Harbour to that part of the said River called Hudson's River, which is in forty one Degrees of Latitude, being the furthermost part of said Tract of Land and premises, which is bounded by the said River and crossing over from thence in a Straight Line Extending from that part of Hudsons River aforesaid to the Northermost Branch of a certain River there called Delaware River and to the most Northerly poynt or Boundary of the said Entire Tract of Land and premises now called the north partic'on, and from the said north partic'on point Extending Southward unto the most Southerly point by a Straight and direct Line drawn through the said Tract of Land from the said north partic'on unto the said South partic'on point called the Line of Partic'on, Dividing the said Easternly part, share and porc'on from the Westernly part share and porc'on of said Tract of Land. * * *

In witness whereof the said parties to these presents have to these present Indentures interchangeably Sett their hands and Seales. Dated the day and years first above written.

ELIZ. CARTERET," AND OTHERS.

EXHIBIT 19.

Release from Duke of York to the Twenty-four Proprietors, March 14th, 1682-3.

Leaming & Spicer, Page 141.

48 "This indenture made the fourteenth day of March, in the five and thirtieth year of the reign of our Sovereign LORD CHARLES the Second, by the Grace of God of England, Scotland France and Ireland, King, Defender of the Faith, &c. Anno Domini 1682 Between his Royal Highness the most illustrious Prince JAMES, Duke of York and Albany, Earl of Ulster, &c., only brother to our Sovereign Lord the King, of one part, and the Right Honourable James Earl of Perth, of the Kingdom of Scotland," and others, "of the other part. Whereas our said Sovereign Lord the King's Majesty, in and by his Letters Patent, under the great seal of England, bearing date the 12th day of March, in the sixteenth year of

his said Majesty's reign, did amongst several other things therein mentioned, give and grant unto his Royal Highness JAMES Duke of York, his heirs and assigns, all that tract of land adjacent to New England, in the parts of America, and lying and being to the westward of Long Island and Manhattan Island, and bounded on the east part by the main sea; and east by Hudson's river; and hath on the west, Delaware bay or river; and extendeth southward to the main ocean as far as Cape May, at the mouth of Delaware bay; and to the northward as far as the northermost branch of the said branch of the said bay or river of Delaware, which is in one and forty degrees and forty minutes of lattitude, and crossing over thence in a straight line to Hudson's river, in one and forty degrees of lattitude; which said tract of land was then after to be called by the name of New Cesarea or New Jersey. * * * And whereas his said Royal Highness JAMES, Duke of York, did heretofore by several good and sufficient conveyances and assurances under his hand and seal duly executed, the twenty-third and twenty-fourth days of June, in the sixteenth year of his said Majesty's reign, for the consideration therein mentioned, grant and convey the said tract of land and premises before mentioned, to John Lord Berkeley, baron of Strat-
49 ton, and of his Majesty's most honorable Privy Council, and Sir George Carteret, of Salterem, in the county of Devon, knight and Baronet, and one other of his Majesty's most honourable Privie Council, and their heirs, the said tract of land and premises before particularly mentioned, and the reversion and reversions, remainder and remainders of the same, to hold unto the said John Lord Berkeley and Sir George Carteret, their heirs and assigns forever, under the yearly rent of twenty nobles sterling, payable as the same is therein reserved to be paid. And whereas his said Majesty did by other his Letters Patents, dated the twenty ninth day of June in the six and twentieth year of his said Majesty's reign, grant and convey unto his said Royal Highness, and his heirs forever, as well the said tract of land and premises herein before recited to have been granted and conveyed by his said Royal Highness, unto the said John Lord Berkeley and Sir George Carteret as aforesaid, as all other the lands and hereditaments in and by the said herein before recited Letters Patents granted, or mentioned to be granted. And whereas his said Royal Highness by his indenture of lease and release, bearing date the —— of July, in the six and twentieth year of his Majesty's reign, did grant and convey the said tract of land and premisses, to the said Sir George Carteret, his heirs and assigns, as by the said indenture relation being thereunto had, may appear. And whereas upon a partition made of the whole and entire premisses, between the said Sir George Carteret and William Penn of Worminghurst, in the county of Sussex, Esq.; Gawn Lawry, of London, merchant: Nicholas Lucas, of Hertford, in the county of Hertford, malster; and Edward Bullynge, of Westminster, in the county of Middlesex, gentleman; in whom the fee simple of the said Lord Berkeley's, undivided moyety, of all and singular the premises, by good and sufficient con-

veyances, was then vested the said William Penn, Gawen
50 Lawry, Nicholas Lucas, and Edward Bullynge, did bargain, sell, release and confirm unto the said Sir George Carteret, his heirs and assigns, all that easterly part, share and portion, and all those easterly parts, shares and portions of the said whole and entire tract of land and premises before mentioned, extending eastward and northward along the sea coasts, and the said river called Hudson's river, from the east side of a certain place or harbour, lying on the southerly part of the same tract of land, and commonly called or known in a map of the said tract of land, by the name of Little Egg Harbour, to that part of the said river called Hudson's river, which is in forty one degrees of latitude, being the northermost part of the said tract of land and premises, which is bounded by the said river; and crossing over from thence in a straight line, extending from that part of Hudson's river aforesaid, to the northermost branch of the aforementioned river called Delaware river, and to the most northerly point or boundary of the said entire tract of land and premises, now called the north partition point; and from thence, that is to say, from the north partition point, extending southward, unto the more southerly point, by a straight and direct line drawn through the said tract of land, from the said north partition point unto the said south partition point, by the consent and agreement of the said parties, now called the line of partition, and by them intended for the dividing and making a partition of the easterly part, share and portion, from the westerly part, share and portion of the said tract of land and premises * * * Now these presents witness, that for and in consideration of a competent sum of lawful English money, unto his said Royal Highness in hand paid, and for the better extinguishing all such claims and demands as his Royal Highness, or his heirs, may anywise have of or in the premises aforesaid, now called East New Jersey, or any part of them, and for the
51 further and better settling and conveying, assuring and confirming of the same, and of every part thereof, according to the purport and true meaning of these presents, his Royal Highness the said JAMES Duke of York, hath granted, bargained, sold, released and confirmed, and by these presents, as far as in him lyeth, doth grant, bargain, sell, release and confirm unto the said James, Earl of Perth," and others, "their heirs and assigns, to improve and plant the said premises with people, and to exercise all necessary government there, whereby the said premises may be the better improved, and made more useful to them, their heirs and assigns, and to the King's Majesty, his said Royal Highness hath likewise given and granted, assigned and transferred, and doth by these presents give, grant, assign and transfer unto the said Earl of Perth," and others, "their heirs and assigns, proprietors of the said Province of East New Jersey aforesaid, for the time being, all and every such and the same powers, authorities, jurisdictions, governments, and other matters and things whatsoever, which by the said respective recited Letters Patents, or either of them, are or were granted, or intended to be granted, to be exercised by his said Royal Highness, his heirs, as-

signs, deputies, officers, or agents, in or upon, or in relation unto the said premises, hereby confirmed, or intended to be hereby confirmed, and every of them, in case the same were now in the actual seisen of his Royal Highnes, to be held, enjoyed, exercised and executed by them the said Earl of Perth," and others, "their heirs and assigns, Proprietors of the said Province of East New Jersey, for the time being, as fully and amply to all intents, constructions, and purposes, as his said Royal Highness, or his heirs, might, could or ought to hold, enjoy, use, exercise or execute the same by force and virtue of the said several and respective before recited Letters Patents, or either of them, or any thing in them, or either or any of them, contained or otherwise howsoever. Provided always, that these presents
52 be entered with the Auditor General of his said Royal Highness within two months next after the date hereof. In witness whereof the parties above mentioned to these present indentures, interchangeably have set their hands and seals, the day and year first above written.

"JAMES."

Exhibit 20.

Commission of Colonel Thomas Dongan to be Governor of New York.

Documents Relating to the Colonial History of the State of New York. Vol. III, P. 328.

September 30, 1682.

(New York Entries, CLI, 39.)

"Whereas it has pleased ye Kings most Excellent Ma'tie my Soveraigne Lord & Brothre by his letters Pattents to give and grant unto me and my heires and assingnes all that part of ye Maine land of New England beginning at a certaine place called or knowne by the name of St. Croix next adjoyneing to New Scotland in America and from thence extending along ye Sea Coast unto a certaine placed called Pemaquin or Pemaquid and soe up ye River thereof to ye furthest head of ye same as it tendeth Northward and extendeth thence to ye River Kinebequi and soe upwardes to ye shortest course to ye River Canada Northward. And also all yt Island or Islands comonly called by ye severall name or names of Matowacks or Long Island scituate, lyeing and being towards ye West of Cape Codd and ye Narrow Higansetts abutting upon the Maine land betweene
53 ye two Rivers there called or knowne by ye severall names of Connectecut and Hudsons River, together alsoe with ye said river called Hudsons River and all ye land from the West Side of Connectecut river to ye East side of Delaware Bay. And alsoe all yse severall Islands called or knowne by the name of Martyn

Viniards and Mantukes otherwise Mantukett,[1] together with all ye lands islands soyles rivers harbours mines mineralls quarries woods marshes waters lakes fishings, hau(k)ing hunting and fowling, and all other royaltyes and profitts comodityes & hereditaments to ye said severall islands lands and premises belonging & apperteyneing with their and every of their appurtenances. To hold the same by[2] my owne proper use and behoofe, w-th power to correct punish pardon governe and rule ye inhabitants thereof by my selfe or such Deputyes Commissionrs or offcrs as I shall thinke fitt to appoint as by his Mats said Letters Pattents may more fully appeare. And whereas I have since for divers good causes and consideracons by severall instrumts undr my hand and seale bargained sold released and confirmed unto Sir George Carterett (late Vice Chamberlaine to his Mats Household) and his heires, and unto Edward Billing and others and their heirs, all yt tract of land (prcell of ye prmissess) comonly called or knowne by the names of East and West New Jersey, scituate on the West side of Hudsons River acording to certaine Boundaryes more particularly expressed in ye sd severall instrumts and undr certaine rents and covents as therein relacon being thereunto had may more fully appeare. And Whereas I have conceived a good opinion of the integrity prudence ability and fitness of Coll. Thomas Dongan to be employed as my Lieutent there, I have therefore thought fitt to constitute and appoint him ye said Coll: Thos[2] to be my Lt and Govr within ye lands islands and places aforesaid (except the said
54 East and West New Jersey) to performe & execute all and every the powers wch are by the said lettrs pattents granted unto me to be eexcuted by me my Deputy Agent or Assignes to have and to hold ye said place of Lieutenant & Govr unto him the said Coll: Thomas Dongan but during my will and pleasure only; Hereby willing and requiring all and every the Inhabitants of the said lands Islands and places (except as before excepted) to give obedience unto him the said Coll: Thomas Dongan in all things, according to the tenour of his Mats Letters Pattents, And ye said Coll: Tho Dongan to observe follow and execute such Ordrs and direccons as he shall from time to time receive from my selfe. Given undr my hand and seale at St. James's the 30th day of September 1682."

Exhibit 21.

An Act to Divide the Province Into Four Counties, 1682.

Leaming & Spicer, Page 229.

"Having taken into consideration the necessity of dividing the Province into respective counties, for the better governing and settling courts in the same, Be it enacted by this General Assembly, and

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[1] "Nantukes, otherwise Nantukett." Official copy in Book of Commissions, I. 59.—Ed.

[2] "To my owne." Official copy.—Ed.
"Coll. Thomas Dongan." Ibid.—Ed.

the authority thereof, that this Province be divided into four counties as followeth. Bergen county to contain all the settlements between Hudsons river and Hackinsack river, beginning at Constables Hook, and so to extend to the uppermost bound of the Province northward between the said rivers."

55 EXHIBIT 22.

Letter from Duke of York to Governor Dongan.

N. J. Arch., Vol. 1, p. 475.

"Coll. Dongan

My Coms. are makeing wt. dispatch they can with. those Bills that you have sent hither, and particularly wth. yt. wch. conteynes the Franchises and Priviledges to ye Colony of New Yorke, wherein if any alterac'ons are made (either in ye forme or matter of it) they will be such as shall be equally or more advantagious to the people there, and bettr. adjusted to ye laws of England. In the mean time because of some rumours I have mett wth. as if some of yor. neighbors undr colour of grants from my selfe or upon some other groundless pretences endeavour all they can to obstruct ye trade of New Yorke and Albany; I thinke it fitt hereby to recommend that to you in all especeall manner that you may not suffer any innocac'on with in that river, nor any goods to passe up it but what shall have paid the dutyes at New Yorke; we to p'serve the chiefe benefitts of yt trade to the inhabitants and traders of New Yorke and Albany wch is agreeable to ye Laws of yor Colony and the practice of yor p'decesrs, and necessary for the collecting those Customes and other dutyes wch must helpe to support yor government. And if you find that ye Inhabitants of East Jersey have any other way of tradeing with the Indians then by the River of N. Yorke that you will use your endeavours to prevent it, and give me advise thereof with yor opinion wt is proper for me to doe in it: my desire being to preserve the Indian Trade as entire as I can for the benefit of the Inhabits. and traders of New Yorke preferably to all others

Windsor 26th Augst (1684) I am &c

To Coll. Dongan &c."

56 "An Act to Divide the Province and Dependencies into Shires and Counties. Pass'd the 1st of October, 1691.

"Forasmuch as mistakes may arise about the Limits and Bounds of the respective Counties within this Province: For prevention whereof,

"I. Be it enacted by the Commander in Chief and Council and Representatives and by the Authority of the same, That the said Province be divided into Twelve Counties as followeth:

"II. The City and County of New York, to contain all the Islands commonly called Manhattan's Island, Manning's Island, the two

Barn Islands, and the three Oyster Islands; Manhattan's Island to be called the City of New York, and the rest of the Islands, the County.

* * * * * * *

"VIII. The County of Richmond to contain all Staten-Island, Shooter's-Island, and the Islands of Meadow on the West Side thereof."

Bradford's Laws of N. Y., p. 39.

Exhibit 24.

An Act for Dividing Each County Into Township, 1693.

Leaming & Spicer, Page 329.

"Whereas by act of General Assembly in the month of March, 1682, this province was divided into counties for the better governing and settling courts in the same, but whereas several things 57 is to be done by the inhabitants of towns, hamlets, tribes or divisions within each county, as chusing of deputies, constables, &c., taxing and collecting of several rates for publick uses, and the making orders amonggst themselves respectively about swine, fences, &c. And whereas a great many settlements . e not reckoned within any such town or division, nor the bounds of the reputed towns ascertain'd, by mean whereof the respective constables knows not their districts, and many other inconveniences arising from thence, and forasmuch as by the act made in Sept. 1692, for dividing the several counties into townships, the time for the returns of the said divisions being too short, and the method of dividing by county meetings, inconvenient. Be it therefore enacted by the Governor, Council and Deputies now met and assembled in General Assembly, and by the authority of the same, that the several counties of this Province, shall be divided as followeth, viz. In the county of Bergen, the township of Hacksack, shall include all the land betwixt Hackinsack river, and Hudsons river, that extnds from the corporation town bounds of Bergen to the partition line of the Province. The corporation town of Bergen, being bounded according to their charter."

Exhibit 25.

Surrender by the Proprietors of the government of East and West New Jersey, April 15th, 1702. Acceptance of the same, April 17th, 1702. Leam. & S., pp. 609 and 617.

EXHIBIT 26.

"An Act for Dividing and Ascertaining the Boundaries of
58 all the Counties in This Province. Passed January 21, 1709-10.

"1. That in the eastern division, the county of Bergen shall begin at Constable's hook, and so run up along the bay and Hudson's river to the partition point between New Jersey and the province of New York; and so run along the partition line between the provinces, and the division line of the eastern and western division of this province, to Pequaneck river; and so run down the said Pequaneck and Passaick river to the sound; and so to follow the sound to Constable's Hook, where it began.

"2. That the county of Essex shall begin at the mouth of Rahway river, where it falls into the sound, and so run up the said Rahway river to Robeson's branch; thence west to the division line, between the eastern and western division aforesaid, and so to follow the said division line to Pequaneck river, where it meets Passaick river; thence down Passaick river to the bay and sound; thence down the sound to where it began." Rev. of N. J., 1877, p. 198.

EXHIBIT 2 AND 27.

Charter for Township of Bergen, January 13, 1713-14.

"Patent for) ANNE by ye Grace of God of Great Britain and
Bergen Townsh.) Ireland Queen Defender of ye Faith &c. To all to whom these presents shall Come or may in any wise concern Greeting whereas our Loveing Subjects Andreas Van Buskirk Barnett Christian Enoch Freeland Rutt Van Horne Hendrick Culper Wonder Devericks & John Devericks Freeholders Inhabitants of ye town of
Bergen in ye County of Bergen In our Province of New Jersey
59 on behalfe of themselves & ye rest of ye Freeholders of ye sd town by their Humble Petition to our trusty & well Beloved Robert Hunter Esqr our Capt Generall & Governour in chiefe of our Province of New Jersey have set forth that their Ancestors & Predicessors Freeholders of ye sd town have possessed held & Enjoyed Divers Lands tenemts & Hereditamts & Used & exercised Divers Privilidges & immunities by vertue of a Grant Charter or Patent sealed with ye seale of ye Province of New Jersey & Signed by Philip Carterett Esqr Late Governour of this Province and his Councill under ye Right Honorable John Lord Berkley Barron of Stratton & Sr George Carterett Knight & Baronett then Absolute Lords Proprietors of ye sd province beareing date ye twenty second Day of Sept., Anno Dom. one thousand six hundred sixty & eight wch sd Lands were butted and bounded as Followeth Vizt. Beginning at ye No end of ye sd town from a place called Mordains Meadow Lying upon ye wt side of Hudsons river from thence to runn upon a No Wt Line by a three raile fence that is now standing to a Place called

Espatin & from thence Runs to a Little Creek surrounding No No Wt till it comes into hackinsack river containing in breadth from ye top of ye Hill one mile and a halfe or one hundred & twenty chain from thence it runs along ye sd hackinsock river upon a So So Wt Line till it comes to ye point or neck of Land that is over agt staten Island & shooters Island in Arthur Gull bay containing in Length above twelve miles from thence Running Eastward along ye river called Kill Van Kull that parts Staten Island & ye main to a point or neck of Land called Constables Hooke & from thence to run up Noward all along ye Bay up into Hudsons river till it comes to Mordaines Meadow aforesd so that ye whole tract of up Land & Meadow properly belonging to ye sd town of Bergen is bounded on ye No end by a tract of Land wch Did belong to Capt. Nicholas Varlett & Mr Samuel Eadsall on ye Et side by Hudsons river on ye So End by ye Kill Van Cull that parts Staten Island & ye main and
60 on ye Wt side by Arthur Cull Bay and Hackinsack river ye whole containing Eleven thousand five hundred and twenty acres English measure & whereas Divers of ye sd Lands remain in Comon & undivided for ye General Good & Benefitt of ye Freeholders & Inhabitantsof sd town on wch sd Lands ye Neighbouring townes & Settled Do comitt Great wast & spoile in Culling Down & carrying away Great Quantities of their timber who cannot be relieved In ye premises in ye ordinary course of Law or Equity through some Defects in ye Grant of Incorporation aforesd wch to Prevent for ye Future they have prayed our Charter or Pattent of Incorporation wch request we being willing to grant Know ye that of our Especiall Grace certain Knowledge & mere motion we have given Granted ratified & confirmed And Do by these prsents for us our heirs & Successors forever Give Grant ratifie & confirme unto Andreas Van Buskirk Barnett Christian Enock Freeland Rutt Van Horne Henry Culper Wender Devericks John Devericks in trust to & for themselves & ye rest of ye Freeholders Inhabitants of ye sd town & their Successors forever within ye Limits & bounds aforesd ye Free Liberty & Privilidge of being a townshi[p] & they & their successors forever hereafter are & shall be by virtue Hereof a community or township or body Corporate or Politick in Deed & in name by ye name of ye trustees of the Freeholders inhabitants of ye township of Bergen & that they & their Successors forever hereafter shall & may Have a perpetuall Succession of ye number of seven of ye principall freeholders & inhabitants of ye sd township of Bergen Who shall be ye trustees of ye Freeholders inhabitants of ye township of Bergen that is to say that upon ye Death or Other Avoidance of any One or more of ye sd trustees it shall & may be Lawfull for ye Freeholders of ye sd township For ye time being being thereunto Sumond or Warned by ye Constable or Constables of ye sd town for ye time being by Order of ye Surviving trustees of ye sd town-
61 ship of Bergen or ye Major part of them to Assemble & meet together at such time & place within ye sd township as ye sd Surviveing trustees for ye time being or ye Major part of them from Time to time as need shall be shall think fitt to Nominate & Appoint & there by Majority of Votes of ye sd Freeholders to elect

& chuse so many of ye Principall Freeholders of ye sd township resideing within ye bounds of ye sd township as may make ye number of ye sd trustees to be seaven wch trustees so chosen & Elected as aforesd Together with ye surviveing trustees for ye time being shall be trustees of ye sd township to all intents & purposes as Much as if they had been particularly nominated & expressed in this our sd Grant & we do further Give & Grant Unto ye sd trustees of ye Freeholders inhabitants of ye town of Bergen & their Successors forever that it shall & may Be Lawfull to & for ye sd trustees & their Successors forever by ye name of ye trustees of ye Freeholders Inhabitants of ye Township of Bergen in any of our Courts within our sd Province of New Jersey to sue & be sued answer & be answered unto implead & be Impleaded Defend & be Defended and we do further Give and Grant unto ye sd trustees of ye Freeholders Inhabitants of ye township of Bergen & their Successors for ever Hereafter full Power & Lawfull Authority as often as there shall be occasion at their discresion or ye Discresion of the Major part of them to Summons & call together ye Freeholders of ye sd Township & for ye sd Freeholders & their Successors so sumoned and called together to Assemble & meet together at such certain Days & at such Place as ye sd trustees for ye time being or the Major part of them shall appoint to make and Enter in a Book for that purpose to be kept all such prudentiall rules and orders for ye Improvemt preservation & Defence of their sd Comons as they or ye Major partt of them shall agree Upon as also to Appoint a Clerk & Register for ye Doing thereof &
62 to contribute & Levy among themselves such comon sums as are Absolutely necessary for ye Doing thereof from time to time as need shall be & not otherwise & further We do for us our heir & Successors Give & Grant unto ye sd trustees of ye Freeholders Inhabitants of ye township of Bergen & their Successors forever that they & their Successors by ye name aforesd be forever hereafter one body Corporate & Politick able and Capable in ye Law to Purchase have take & receive & enjoy to them & their Successors forever ye Use of ye Freeholders Inhabitants of ye township of Bergen Lands Tenemts Messuages Rents Privilidges & other Hereditamts whatsoever of whatsoever Nature kind & Quality they be in fee & perpetuity as also to Give Grant Bargain sell Lett Lett & Dispose of any of the lands belonging or appurtaining to ye sd Comunity & as yet unappropriated either for one two or three lives for term of years or in fee & also that ye sd Corporation shall & may forever hereafer have & Use a Comon seale for ye Business of them & their Successors for ye Businesses of them & their Successors with full power to alter Break & now make ye same at their Discression & we do further Give and Grant to ye sd trustees of ye Freeholders Inhabitants of ye township of Bergen and their Successors forever that it shall and may be Lawful for ye Freeholders Inhabitants of ye sd town Annually & once in Every Year to Assemble & meet together on ye first Tuesday in May Annually to Choose two Constables one overseer of ye poor and two Overseers of ye Highways by ye Majority of ye votes of ye sd freeholders inhabitants of ye sd town of Bergen wch Constables & Overseer's so Chosen as aforesd shall serve in their Re-

spective Offices in ye sd town Until ye next Annuall Election If they So Long shall Live or pay ye sum of two pounds each Person refuseing to serve for ye Use of the poor of ye sd town & That in Case of ye Death or Refusall of any of ye sd Officers as often as ye same shall happen out of ye Usuall aniversary time of Election that
63 it shall & may be Lawfull for ye Freeholders Inhabitants at any other time & place to Assemble & Meet together to Chuse others in their Room & place & that it shall & may be Lawfull for any Justice of ye Peace within The sd township to administer an Oath to sd Officers of ye sd town for ye true & Faithful Discharge of their Respective Offices to have hold & Enjoy all & Singular ye sd privilidges Rights Liberties & imunities aforesaid to ye sd Andreas Van Buskirk Barnett Christian Enoch Freeland Rutt Van Hoorne Hendrick Culper Wonder Devericks John Devericks Freeholders Inhabitants of ye township of Bergen & their Successors forever Yielding Rendring & paying unto us our heirs & Successors or to our or their Collector & Receiveor Generall of our sd province for ye time being yearly & every Year on ye feast Day of ye Anuntiation of ye Blessed Virgin Mary as an acknowledmt for ye sd privilidge ye Annuall rent of Five shillings in Liew & Stead of all other Rents Services Dues Duties & Demands whatsoever for ye same in Testimony whereof we have Caused these our Letters to be made Pattent & ye seale of our Province of New Jersey to be Affixed & ye same to be Entred of Record in our Secretarys Office of our sd province Witness our trusty & welbeloved Robert Hunter Esqr our Capt Generall & Governor in Cheife in & over our Provinces of New Jersey New York & All ye territories & tracts of Land Depending thereon in America & Vice Admirall of ye same &c. at Burlington This Fourteenth Day of January in ye twelfth year of our Reigne &c.

BASS *Secretary.*"

Recorded in Liber AAA of Commissions, in the office of N. J. Sect'y of State, pages 154-155.

64 EXHIBIT 28.

"His Majesties Grant to the Principal Inhabitants of the Town of Perth Amboy in the Province of New Jersey for Erecting the said Inhabitants Into a Body Corporate and Politique by the Name of the Mayor Recorder Aldermen and Commonality of the City of Perth Amboy."

"George by the Grace of God King of Great Britain France Ireland Deffender of the Faith &c: To all Persens to whom these presents shall come Greeting, Whereas our loving subjects, John Johnston, Thomas Gordon, John Hamilton, George Willoks, John Barclay, William Eier, John Stevens, William Hodgson, William Frost, Henry Berry, John Sharp, Thomas Turnbull, Andrew Bedford and Alexander Walker and many other Inhabitants in our town of Perth Amboy in our Province of Nova-Cesarea or New Jersey by their Humble Petition Presented unto our Trusty & well beloved

Robert Hunter Esqr our Captain General and Governour in chief of our said Province of New Jersey, New York and Tracts of land depending thereon in America and Vice Admiral of the same &c., on behalf of themselves and others the Freeholders & Inhabitants of the said town have set forth that the said Town of Perth Amboy is not only the best Situation for a place of trade in our said Province of New Jersey and has a harbour for Shipping prefferable to those in the Province adjoining, but that it is also the only Port appointed for the Collecting of our Customs in the Eastern Division of our Said Province of New Jersey, that the Said Town hath many years Languished under designed & unjust Impositions to prevent its Growth to the Loss and Detriment of the Province until the Government happily fell under the Care of our said Governor's Just Administration. The Petitioners with a due sence of Gratitude thankfully Acknowledging its New Life & Present Prospect
65 of becoming a place is to be wholly Attributed to our said Governor's Expensive Encouragement & favorable Containance, As Also the Repeated Instances of his benignity during the Course of his Mild Administration is what gives the Petitioners hope their present supplication may prove successful into their Request is not to be Granted of Right but of Grace, Therefore Humbly prays for our Royal Grant by Letters Pattent under our Great Seale of our said Province of New Jersey to Incorporate the Freeholders Inhabitants of the said Town of Perth Amboy into a Body Corporate & Politique with Perpetual Succession by what Name our said Governour shall think fit, As Also to Grant such Immunities and Priviledges as may be thought requisite for the Well Ordering & Ruling thereof &c. We being willing to Promote Trade, Industry, Rule and good Order amongst all our Loving Subjects in Granting their reasonable Request in that behalf, Therefore, Know ye that we of our special Grace Certain Knowledge & meer motion Have Given Granted Constituted Appointed Ratified and Confirmed and do by these presents Give Grant Constitute Appoint Ratify & Confirm unto the said John Johnston, Thomas Gordon, John Hamilton, George Willoks, John Barclay, William Eier, John Stevens, William Hodgson, William Frost, Henry Berry, John Sharp, Thomas Turnbull, Andrew Bedford, & Alexander Walker and the rest of the Freeholders and Inhabitants of said Perth Amboy to them and their successors for ever within the Limitts boundaries & Precincts thereof after mentioned to Witt all that Tract of Land beginning upon the North Side of the Raritan River by the upper corner of that called Peter Sonman's Land and by the Lower Corner of that now in the Possession of James Moore of Woodbridge, thence extending on a straight line as said Moore's Land goes to Land now Possessed by one John Veal, thence continuing along by the said Veal's land to the North East corner thereof, from thence extending upon
66 a Direct Line to the South West corner of David Herriot's Land and so extending along by said Herriot's, to the South East corner thereof, from thence extending an a straight line to the South Westerly corner of the Land lately in the tenure and occupation of John Carhart formerly one Henry Lessenbies and so along

the line thereof Easterly as it goes to the Meadow or Marsh on the north side of a Gully where Water Generally runs, thence extending on a direct East Line through the Marsh and Sound to Low Water mark on the East side thereof from thence running down the Sound Southerly as far as the Southernmost point of Staten Island from thence on a direct line to where George Willoks Plantation called Rudyards Adjoynes by a Creek to that Plantation of Late Belonging to Andrew Browne Deceased, thence extending along the lines of said Brownes Land (excluding the same) to Matewan Creek, thence up the Creek to a Bridge thereon, where the highway from Amboy Ferry to Freehold & Middletown Crosseth the same, thence extending along the Partition line betwixt the Counties of Middlesex & Monmouth to Milston Brook, thence down the said Brook to the Post Road, thence along the same to South River as it goes to Rariton River and so down Rariton River (Including the said Rivers) to High Water Mark on the North Side thereof to where the Limitts of said Town is said to begin to be from henceforth Called Known & Distinguished by the name of the City of Perth Amboy."

May 22, 1718, recorded in surveyor general's office Eastern Division of N. J., Book C2, p. 1.

67 EXHIBIT 29.

Letter from Lewis Morris, President of the Council of New Jersey, to the Lords of Trade, N. J., Arch., Vol. 4, p. 439.

"PERTH AMBOY, *Novembr.* 21: 1719.

My Lords.

* * * * * * *

I have receiv'd two letters, one from your Lordships on the 7th. of August last, and another from Mr. Secretary Popple of the 26th. of the same month; in the first your Lordships desire to know the Limits and boundaries, of the Province of New Jersie, which are as follows:

It begin on Hudsons River, in the latitude of fourty one degrees, and runs from thence, in a direct line to the latitude of fourty one degrees And fourty minutes on the northermost branch of the River Delaware, then it runs downe, following the course of the river Delaware to Cape May: wch is the northermost point, on the mouth, or Enterance into that river, which there, and for many leagues up, looses the name of Delaware river and is calld Delaware bay. from Cape May it Extends Northward, along the sea to Sandy Hook; and from the Northward of A great bay calld Sandy hooke bay (into which the rivers of Hudson, Raritan, Hackinsack and Pisaick, empty themselves) it Extends along the river of Hudson, to the latitude of fourty one first mentioned.

It is bounded on the South East, by the Sea and on ye East, partly by the Sea, and partly by Hudsons River, which divides it from part of the Province of New Yorke. on the North East by the Province of New Yorke; A direct line from the latitude of fourty one

degrees, on hudsons river, to the latitude of fourty one degrees, and fourty minutes on the Delaware being the line of Partition
68 between them. it is bounded on the South, Southwest, and west, by the bay and river of Delaware, which divides it from the Province of Pensilvania.

The best Voucher I know of, for these boundaries, is A grant from the late King James when Duke of Yorke, to my Lord Barclay and Sir George Carteret; which I think is Enrolled in Chancery; if not; the Jersie Societie, can (I suppose) furnish your Lordships with it, or, if your Lordships thinke it necessary, I can get it taken out of the records here, and transmit it to you.

* * * * * * *

My Lords, Your Lordships
Most Obedient and Most Humble Servant,
LEWIS MORRIS,
Right Honble, ye Lords of Trade and Plantations."

EXHIBIT 30.

Extracts from the Montgomerie Charter of the City of New York, Granted in 1730, *Found in New York City Consolidation Act, Annotated,* 1891. *by Mark Ash, Page* 892, *&c.*

"2. And we do further, of our special grace, certain knowledge and mere motion, for us, our heirs and successors, give, grant, order and appoint that the said city of New York, and the compass, precincts, circuit, bounds, liberties and jurisdictions of the same, do reach, extend and stretch forth, and shall and may reach, extend and stretch forth, as well in length as in breadth and circuit, in and through the limits and boundaries following, to wit: To begin at the river, creek or run of water called Spytden Duyvel, over which King's bridge is built, where the said river or creek empties
69 itself into the North river, on Westchester side thereof, at low-water mark, and so to run along the said river, creek or run, on Westchester side, at low-water mark, unto the East river or sound, and from thence to cross over to Nassau Island, to low-water mark there, including Great Barn Island, Little Barn Island and Manning's Island, and from thence all along Nassau Island shore, at low-water mark, unto the south side of the Red Hook; and from thence to run a line across the North river so as to include Nutten Island, Bedlow's Island, Bucking Island and the Oyster Island, to low-water mark on the west side of the North river, or so far as the limits of our said province extends there, and so to run up along the west side of the said river -at low-water mark, or along the limits of our said province, until it comes directly opposite to first mentioned river or creek, and thence to the place where the said boundaries first began. And also, that the said city, within the limits and jurisdiction thereof as aforesaid, be and forever hereafter shall be and remain divided into seven wards, to wit: The West

ward, the South ward, the Dock ward, the East Ward, the North ward, Montgomerie ward and the Out ward; each and every of which wards shall contain and comprehend, and reach and extend through the several limits and bounds following, to wit:

The West ward to begin at the middle of the east end of the street that goes from the parade to the North river, between the lot of ground, now in fence, belonging to Charles Sleigh, and the house and ground late of Thomas Elde; and from thence to run a direct line over the middle of the west end of Beaver street, and so along the middle of Beaver street till it comes directly opposite to the middle of the south end of New street, and then to run along the middle of New street to the north end thereof; and from thence to run to the rear of the dwelling house now in the possession of Domine Du Bois; and from thence to run all along the rear of the houses that front the Boardway up to the north part of the rear of
70 Spring Garden house; and from thence to run up a line as the Broadway runs to the end thereof, including the said Broadway; and John Harris, his house, and to include all other houses hereafter to be built fronting the said Broadway, and from the north end of the Broadway to continue and run a line as the said street runs until it comes directly opposite to Bestaver's Killitie or rivulet, and from thence to run to the said Bestaver's Killitie, and so to continue the said line four hundred foot beyond low-water mark into the North river, and so down the said North river, always keeping four hundred foot beyond low-water mark, until it comes directly opposite to the middle of the west end of the first-mentioned street, and so to run to and through the middle of the said street, to the place where the said West ward first began.

The South Ward to begin at the middle of Wall street, where the line of the West Ward runs across the same, and from thence down the middle of Wall street, until it comes directly opposite to the middle of the north end of Broad street; and from thence down the middle of Broad street to the long bridge, and from thence to the eastward of and to include the said long bridge, and the market house at the south end of the said street; and from thence to continue to run a south-east line across the East river to low water mark, on Nassau Island shore; and from thence to run along the said shore at low-water mark to the south side of Red Hook, and from thence to run a line across the North river so as to include Nutten Island, Bedlow's Island, Bucking Island and the Oyster Island, to low-water mark on the west side of the North river; and so to run up along the west side of the said river at low-water mark, until it comes directly opposite to Bestaver's Killitie or rivulet; and from thence to run to the north-westerly corner of the West Ward, at four hundred foot below low-water mark; and from thence along the bounds of the said West ward till it comes to the south-
71 westerly end thereof; and from thence still along the bounds of the West Ward, through the street by the parade, and through Beaver street and New street, to the place where the South ward began.

* * * * * * *

The Out ward to begin at the north-westerly corner of the South ward, at low water mark, on the west side of the North River, over against Bestaver's Killitie or rivulet, and from thence to run up along the west side of the said river at low-water mark, until it comes directly opposite to the river, creek or run of water, called Spuytden Duyvel, over which King's Bridge is built, and from thence to run to the said creek or river to the Westchester side thereof, at low-water mark, and so to run along the said river, creek or run on Westchester side, at low water mark into the East river or sound, and from thence to cross over to Nassau Island to low-water mark there, including Great Barn Island, Little Barn Island and Manning's Island; and from thence along Naassau Island shore, at low-water mark, to the bounds of the Southward; and from thence along the bounds of the South ward, the Dock ward, the East ward and Montgomerie ward, to the place where the said Montgomerie ward and the north ward meet, at the rivulet that runs from fresh water, and so to run a north course as the said North ward runs, till it comes to the bounds of the West ward; and from thence along the bounds of the West ward to the north-westerly corner thereof, at four hundred foot beyond low-water mark, near Bestaver's Killitie or rivulet, and from thence along the bounds of the South ward to the place where the said Out ward began."

* * * * * * *

"15. And we do hereby for us, our heirs, and successors, ordain, declare, give, and grant, unto the said Mayor, Aldermen, and Commonalty, and their successors, that the Common Council of the said city shall be summoned, called, and held, from time to
72 time, so often, and at such times and places, as the Mayor, or in case of his sickness or absence, the Recorder of the said city, for the time being, shall think fit to appoint or direct; and that it shall and may be lawful to and for the said Common Council of the said city, or the major part of them, to assess and lay such reasonable fines and amerciaments in and upon every officer and member of the body corporate aforesaid, for the time being, who after having had due notice, or being duly summoned to appear or attend at any such Common Council, to be held for the said city, shall neglect so to do, or make default therein, or shall not appear or attend according to such notice or summons, in that behalf, or show a reasonable cause, by the said Common Council, or the major part of them, at their discretion to be allowed, and so as often as such case shall happen, so that no such fine or amerciament for any one default of appearance or attendance of any such officer or member of the body corporate aforesaid, shall exceed the sum of twenty shillings, in the manner and form aforesaid, to be levied, and by, to, and for the use of the Mayor, Aldermen, and Commonalty, of the said city, and their successors, to be recovered and received, without any account thereof to be given to us, our heirs, or successors, or any of our or their officers and ministers. And we do further, for us, our heirs, and successors, give, grant, and confirm, unto the Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors forever, that the Common Council of the said city, for the

time being, or the major part of them (but no other person or persons whomsoever, without the consent, grant, or license, of the said Common Council of the said city, for the time being, or the major part of them), from time to time, and at all times hereafter, shall and may have the sole, full, and whole, power and authority of settling, appointing, establishing, ordering, and directing, and shall and may settle, appoint, establish, order, and direct, such
73 and so many ferries, round Manhattan's Island, alias New York Island, for the carrying and transporting people, horses, cattle, goods, and chattels, from the said Island of Manhattan's to Nassau Island, and from thence back to Manhattan's; and, also, from the said Island Manhattan's to any of the opposite shores all round the same Island, in such and so many places as the said Common Council, or the major part of them, shall think fit, who have hereby, likewise, full power to let, set, or otherwise dispose of, all or any of such ferries, to any person or persons whomsoever; and the rents, issues, profits, ferriages, fees, and other advantages arising and accruing from all and every such ferries; we do hereby fully and freely for us, our heirs, and successors, give and grant unto the Mayor, Aldermen, and Commonalty, of the city of New York aforesaid, and to their successors forever, to have, take, hold, and enjoy the same, to their own use, without being accountable to us, our heirs, or successors, for the same or any part thereof."

* * * * * * *

"24. And we do further, for us, our heirs, and successors, will, ordain, and grant, that the Mayor of the said city, for the time being, shall forever hereafter, be clerk of the market, of us, our heirs, and successors, within the city aforesaid, and the limits, liberties, and precincts, thereof; and that the Mayor of the said city, for the time being, by himself or his deputy, may and shall have full power and authority to do and execute, and shall and may do and execute forever, within the limits, liberties and precincts of said city, all and whatsoever to the office of the clerk of the market there doth, shall, or may belong without any hindrance or impediment of us, our heirs, our successors, or any the officers of us, our heirs, or successors; and that no other clerk of the market shall intermeddle there. And also that the Mayor of the said city, for the time being, and his successors, during the time of his or their mayoralties, and
74 no other, be and shall be, the bailiff and conservator of the water of the North and East rivers, and shall and may do, exercise, and execute, the said office of bailiff and conservator of the water of the north and east rivers, or water bailiff, by him or themselves, or by his or their sufficient deputy or deputies, in, upon, or about the same water of the North and East Rivers (that is to say) in and through all the limits, bounds, and jurisdiction of the said city of New York, upon all and every the banks, shores, and wharves, of the same water of the north and east rivers, within the limits and bounds aforesaid; and to have, receive, collect, and enjoy, all and singular, wages, rewards, fees, and profits, to the same offices of clerk of the market, and water bailiff, or any of them, due or to be due, or belonging to his and their own use, without any account

thereof, to us, our heirs, or successors, to be made. And also, that the Mayor of the said city, for the time being, shall have full power and authority to license or appoint, by warrant, under his hand and seal, or otherwise, one or more marshal or marshals of the said city, porters, carriers, cartmen, carmen, packers, sullers, common criers, scavengers, and to displace all or any of them, and to put others in their rooms; and to add to, or diminish, the number of them, or any of them, when, and as often as the Mayor of the said city, for the time being, shall think fit."

75 EXHIBIT 31.

'An Act for Confirming Unto the City of New York its Rights and Privileges."

Passed the 14th of October, 1732.

"I. BE it declared and enacted by the Governor, the Council and the General Assembly of the Colony, of New York, and it is hereby enacted by the authority of the same, That the Mayor, Aldermen and Commonalty, of the city of New York, shall, and may, forever hereafter remain, continue, and be a body corporate and politic, *in re facto et nomine* by the name of the Mayor, Aldermen and Commonalty of the City of New York; and by that name to sue, plead, and be impleaded, and to answer, and to be answered, without any seizure or forejudger, for, or upon any, pretense of any forfeiture or misdemeanor at any time heretofore done, committed, or suffered.

"II. And be it enacted by the authority aforesaid, That all and singular letters patent, grants, charters, and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the Mayor, Aldermen and Commonalty, of the city of New York, be, and are hereby declared to be, and shall be good, valid, perfect, authentic, and effectual in the law, and shall stand, be taken, reputed, deemed, and adjudged, good, perfect, sure, available, authentic, and effectual in the law, against the King's Majesty, his heirs, and successors, and all and every person and persons, whomsoever, according to the tenor and effect of the said letters patent, grants, charters, and gifts.

"III. And be it enacted by the authority aforesaid, That all and singular letters patent, grants, charters and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the Mayor, Aldermen, and Commonalty of the City of
76 New York, be, and are, to all intents and purposes, hereby ratified and confirmed.

"IV. And be it enacted by the authority aforesaid, That the Mayor, Aldermen and Commonalty of the city of New York, and their successors, shall, and may forever hereafter, peaceably, have, hold, use, and enjoy, all and every the rights, gifts, charters, grants, powers, liberties, privileges, franchises, customs, usages, constitutions, immunities, markets, duties, tolls, lands, tenements, estates

and hereditaments, which have heretofore been given, or granted, unto the Mayor, Aldermen, and Commonalty of the city of New York, by any letters patent, grant, charter, or gift, sealed under the seal of the colony of New York."

"V. And be it enacted by the authority aforesaid, That this present act shall be accepted, taken, and reputed to be a general and public act of Assembly; of which all and every the judges, and justices of this colony, in all courts, and all other persons shall take notice on all occasions whatsoever, as if it were a public act of assembly, relating to the whole colony; anything herein contained to the contrary thereof in any wise notwithstanding.'

Laws of N. Y. from 1691 to 1751 inc., p. 207.

Exhibit 32.

Gov. Cosby to the Lords of Trade.

N. Y. Col. Docs., Vol. 5, p. 956.

"New York, 29 *Aug.*, 1733.

My Lords:

I do myself the honor herewith to transmit to Your Lordspps the minnitts of the Council of this province to the 14th day of 77 October last, and the Acts of Assembly past here the last session of Assembly markt from No. 1 to 23, and to save Your Lordpps the trouble of reading the titles of them I beg leave to refer to the numerical figures with which they are markt.

Nos. 1, 4, 6, 7, 8, 13, 15, 20, 21, 22 being Acts which either revive or continue Acts formerly past which I presume have been considered by your Lordpps Board, need no remarks.

No. 2 is intended and necessary to preserve the breed of sheep.

No. 3 is an act wanted, and very useful.

Nos. 5, 11, 12, 14, 18, 19. The reason and necessity of these will appear in the preamble of the Acts.

No. 9. Several Acts of this kind have been formerly past and some many years ago expired and not again revived; the Wolves being entirely destroyed in some Countys, but in the Countys mentioned in this Act, the wolves still remaining, and it being thought most proper that the reward should be the same in every one of them, this present Act was thought proper to be now made.

No. 16 is the Revenue Bill which needs no observatn.

No. 17 is the Act for supporting Oswego, it is conformable in a great measure to the last Act made for that purpose, and in general makes the Trade of that place defray the expense, the only method whereby to maintain that place.

No. 23. Is an Act to naturalize some Foreigners; many acts of this kind have been past in this province heretofore and I wish there were more frequent occasions for them, for this province wants only people to make it a flourishing Country.

No. 10. Is an Act for confirming the Charter granted to the City of

New York by Govr. Montgomerie. My Lords, as to this Act I would beg leave to observe that the Charter which was designed to be confirmed by this Act having past away so many grants of a very extraordinary nature, that I thought it necessary for me to ac-
78 quaint Your Lordpps with some of the inconveniencys arising from it. By this Charter are granted all the islands near and around his Majesties Garrison here, the soil of the East River, as far as low water mark and extending in length to the utmost of the island whereby his Majestys prerogative & interest may be in danger of suffering, and his ships stationed here under a necessity of becoming petitioners to the Corporation for a convenient place to careen or refit; for this Charter having granted the Corporation all the islands as well near and round as before the Fort which lay comodious for the security and defence of it, in case of any eruptions, was as I conceive a lodgging too great a power in them, in case of any necessity, and by so much a lessening of the King's prerogative.

I must own My Lords, that I was meerly surprised into an assent of this Act, it having been exhibited so very early after my arrival (as Your Lordpps will perceive by the Act itself) that I had not an opportunity of being acquainted with the nature and design of it and from the general words of the title of it, very little apprehended the nature of it's extent.

The Act in General termes confirms the City all the grants to them at any time before made without either referring to any one grant in particular or mentioning what those grants were that were designed to be confirmed by this Act, so that Your Lordpps on view of the Act could not determine what rights grants or particular privileges were to be confirmed by this Act and for ought appears some (if not many) of those girts or Charters might be (and as I believe are) prejudicial to his Majesties interest.

It was but very lately, My Lords, that I came to any knowledge of the Charter designed to be confirmed by this Act, and that Charter consisting of a vast number of Skins of Parchment and the vessel by whom I now write being to sail in a day or two has rendered it impracticable for me by this opportunity to have sent to
79 Your Lordpps a copy of the Charter or of the substance of it, and without it Your Lordpps could not well Judge of the Act, the Act being worded in General terms, but shall send it by the next ship; and now hope that what I have offered will justify Your Lordpps to stop any proceedings at your Board upon that Act until I have the honour a second time of writing further to Your Lordpps concerning it.

I am My Lords, with the greatest respect imaginable Your Lordpps,

Most obedient and humble servant,

W. COSBY."

EXHIBIT 33.

Letter from Lords of Trade to Governor Cosby.

N. Y. Col. Docs., Vol. 6, p. 16.

"Coll. William Cosby Govr. of New York and New Jersey.

SIR: We have received your letters of the 29th of Aug. and 15th of Decr. 1733 and one of the 19th of June 1734 relating to the province of New York, as also your letter of the 17th of June 1734 relating to the affairs of New Jersey, with the several Acts and other public papers you mention to be enclosed.

* * * * * * *

In the Act No. 10 entitled 'An Act for confirming unto the city of New York its Rights and Privileges' mention is made of the Charter granted by Colonel Montgomerie to the city of New York, without a copy of which we cannot judge thereof, therefore de-
80 sire you will transmit us a copy of the said charter as soon as possible.

* * * * * * *

So we bid you heartily farewell, and are your loving friends and humble servants.

Whitehall Aug. the 22d, 1734.

P. DOMINNGUE.
T. PELHAM.
M. BLADEN.
AR. CROFT."

EXHIBIT 34.

Letter from Governor Cosby to Lords of Trade.

N. Y. Col. Docs., Vol. 6, p. 24.

"My Lords:

I had the Honr. of your Lordship's letter of the 22 of August last, as to what relates in Generall to the affaires of New York and New Jersey.

According to your Lordship's directions I send a Copy of the Charter granted by Coll. Montgomerie to the City of New York.

* * * * * * *

I am my Lords with the greatest respect, &c. * * *

W. COSBY."

New York the 7 Dec. 1734.

To the Lords of Trade.

Exhibit 35.

"An Act Appointing Commissioners for Finally Settling and Determining the Several Rights, Titles and Claims to the Common Lands of the Township of Bergen, and for Making a Partition Thereof, in Just and Equitable Proportions, Among Those Who Shall be Adjudged by the said Commissioners to be Entitled to the Same.

81

Sec. 1. Whereas sundry Persons claiming to be Inhabitants and Freeholders within the Township of Bergen aforesaid, by their Petition, presented to the General Assembly of this Colony, do set forth, that Philip Carteret, Esq.; Governor of this Colony of Nova Ceasarea, or New Jersey, under the Right Honorable John Lord Berkeley and Sir George Carteret, the former Proprietors thereof, by a certain Deed or Instrument in Writing, purporting to be a Charter, granted to the Town and Freeholders of Bergen, and to the Villages and Plantations thereunto belonging, bearing date the Twenty-second day of September, in the Year of Our Lord, One Thousand Six Hundred and Sixty-eight; did therein and thereby, with the consent of his council, grant and declare, among other things therein contained, that the Bounds and Limits of the aforesaid Town and Corporation of Bergen, was and is, to begin at the North End of Mordanis Meadow, lying upon the West Side of Hudson's River; from thence to run upon a Northwest line, by a Three Rail Fence that was then standing, to a place called Espoten; and from thence to a little Creek, surrounding North Northwest till it comes into Hackensack River; containing in breadth from the Top of the Hill One Mile and a Half, or One Hundred and Twenty Chains; from then it runs alongst the said Hackinsack River, upon a South Southw-st Line till it comes to the Point or Neck of Land that is over against Staten Island, and Shooters Island, in Arthur Cull Bay, containing in length about Twenty Miles; from thence to run Eastward along the River called Kill Van Cull, that parts Staten Island and the Main, to a point or Neck of Land called Constable's Point or Constable's Hook; and from thence to run up Northward all along the Bay up into Hudson's River till it comes to Mordanis Meadow aforesaid; so that the whole Tract of Upland and Meadow, properly belonging to the Jurisdiction of the said Town and Corporation of Bergen, is bounded at the North End by a Tract of Land belonging to Capt. Nicholas Verlet and Mr. Samuel Edsall; on the East side by Hudson's River; on the South End by the Kill Van Cull that parts Staten Island and the Main, and on the West side by Arthur Cull Bay and Hackinsack River; And did also, among other Things therein mentioned, grant and declare, that the Freeholders aforesaid, or the major part of them, should have power to choose their own Magistrates to be assistants to the President or Judge of the Court and for the ordering all publick affairs within the said jurisdiction; and that the freeholders aforesaid or the major part

82

of them should have power to admit of their own Inhabitants, and to divide all proportions of Lands as are within their Bounds and limits aforesaid, that were not then already appropriated and patented by particular persons before the Day of the Date thereof, according to their Allotments and Estates, as the Justices and Magistrates should in their Wisdom think fit; which Land being so divided, every Man's proportion should be surveyed, butted and bounded by the Surveyor, and recorded by the Secretary and Recorder General of this Colony; and after two years in Possession, should not be subject to any re-Survey or alteration, but should remain according to the first survey forever; as by the said Charter more fully and at large may appear. And the said Petitioners further set forth, That although certain Letters Patent of her late Majesty Queen Anne, issued under the great Seal of this Colony, bearing Date the Fourteenth Day of January in the Twelfth Year of her Reign confirming the aforesaid Incorporation of the said Township of Bergen; and altho' the said Letters Patent were confirmed by an Act of the Governor, Council, and General As-
83 sembly of this Colony, passed the twenty-ninth day of January, in the Year of Our Lord, One Thousand Seven Hundred and Thirteen, entitled an Act for Conformation of a Patent or Charter granted by His Excelleney Robert Hunter, Esq.; Captain General and Governor in Chief in and over the Provinces of New Jersey and New York, and all the Territories and Tracts of Land depending thereon in America, and Vice-Admiral of the same, for the Incorporation of the Town of Bergen, in the Eastern Division of the Province of Nova Ceasarea or New Jersey; yet neither the said Letters Patent, nor the said Act, do prescribe any Method for the Division of the Common Lands of the said Township of Bergen; but leave the same subject to such Method as is above mentioned, to be prescribed by the aforesaid Charter of Governor Philip Carteret, and that although the partition of the said Common Lands is by the aforesaid charter of Philip Carteret, directed to be made by the said Freeholders, in such manner as the Justices and Magistrates shall think fit; yet that elective Magistrates having been a Provision in the Infancy of this Colony, and having long since been disused, except in some particular Incorporations, among which the said Township of Bergen is not to be ranked; a Partition of the aforesaid Common Lands in the Manner directed by the said Charter, is for that Reason become absolutely impossible; that besides the Petitioners are not only at some Variance among themselves, as well concerning what particular Tract of Land patented before the Grant of the said Charter are included within the above recited Bounds of the said Township of Bergen, and consequently concerning the Persons who may properly be deemed Freeholders of the said Township, and who tho' Freeholders with in the said Township, are; or are not entitled to Shares of the said Common Lands; but is also disputed among them, in what Proportions the said Common Lands ought, by Virtue of the said Charter, to be divided among those who undoubt-
84 edly are Freeholders within the Bounds of the said Township, and are entitled to Shares of the said Common Lands; which

Reasons, together with the great Number of the Persons interested, and the Infancy, Coverture, and Absence beyond Seas, of many of them, render a Partition of the said Common Lands impracticable by the Course of the Common Law, and feasible only by Commissioners to be appointed by Act of Legislature, as well for settling the several Claims to the Commons, as the respective Proportions in which the same ought to be divided; and that by Reason of the present undivided State of the said Commons, great and unnecessary Waste is daily committed, by destroying the timber growing on the same; by which Means, if the same be not prevented by a speedy Partition of the said Commons, they will be rendered of little Value, and the Township of Bergen be reduced to great Distress for Want of Timber and Fuel; the Petitioners therefore, pray Relief in the Premises, as by the said Petition may appear." Laws N. J., 1763, page 66, Chapter XVIII.

EXHIBIT 36.

Proceedings of said commissioners in pursuance of above act and supplements, on file in the offices of the clerks of Bergen and Hudson counties, and in the office of the clerk of the Township of Bergen, and Published in Winfield's Land Titles.

85 EXHIBIT 37.

"An Act for Establishing the Boundary or Partition Line Between the Colonies of New York and Nova-Caesarea or New Jersey, and for Confirm- the Titles and Possessions.

Passed the 26th of September, 1772.

"Whereas the boundary or partition line between the colonies of New York and Nova-Caesarea or New Jersey, from the station on Hudson's river to the station on Delaware river, not being duly ascertained, and the extent of their respective jurisdictions remaining uncertain, and the due and regular administration of government in both colonies being by that means greatly obstructed the respective legislatures of both the said colonies did, by acts for that purpose passed, concur in submitting the title and property of the lands, affected by the said boundary or partition line in both colonies, to such a method of decision as his most gracious majesty should think proper by his royal commission or otherwise, to institute and appoint; of which acts his majesty was pleased to declare his approbation, and, by his royal commission under the great seal of Great Britain, bearing date the seventh day of October, in the seventh year of his reign, did authorize and appoint certain persons therein named, or any five of them, to be his majesty's commissioners for ascertaining, settling and determining the boundary aforesaid, between the said colonies. And whereas a sufficient number of commissioners, named in the said commission, on the seventh day of October, in the year of Our Lord, one thousand, seven hundred and sixty-nine, did deter-

mine, that the boundary or partition line between the said colonies of New York and New Jersey should be a direct and straight line from the fork or branch, formed by the junction of the stream
86 or waters called the Machackamack with the river called Delaware or Fishkill, in the latitude of forty-one degrees, twenty-one minutes and thirty-seven seconds, as found by the surveyors appointed by the said commissioners, to a rock on the west side of Hudsons river, marked by the said surveyors, in the latitude of forty-one degrees, being seventy-nine chains and twenty-seven links to the southward on a meridian from Sneyden's house, formerly Corbet's, from which determination the agents for both said colonies appeared to his majesty in his privy council. And whereas," etc.

"I. Be it therefore enacted by his Excellency the Governor, the Council, and the General Assembly, and it is hereby enacted by the authority of the same, That the said partition line, so decreed by the said commissioners, is and shall forever hereafter remain, and be the boundary and line of partition between this colony and the colony of New York.

"II. And be it further enacted, by the authority aforesaid, That James Parker, John Stevens, and Walter Rutherford, Esquires, or any two of them, shall be, and hereby are appointed commissioners to join with such as are appointed on the part of the colony of New York, to ascertain and mark the said partition line, so that it may be sufficiently known and distinguished; and the said commissioners are hereby directed and required, to mark the before-mentioned rock, on the west side of Hudson's river, marked by the surveyors in the latitude of 41 degrees, with a straight line throughout its surface, passing through the place marked by the surveyors, and with the following words and figures, to wit, 'latitude 41 degrees north,' and on the south side thereof, the words, 'New Jersey,' and on the north side thereof, the words, 'New York;' and to mark every tree that may stand in the said line, with five notches and a blaze, on the north-west and south-east sides thereof; and to put up stone
87 monuments at one mile distance from each other along the said line, and to number such monuments with the number of miles, the same shall be from the before-mentioned marked rock, on the west side of Hudson's river, and mark the words 'New Jersey' on the south side, and the words 'New-York' on the north side of every of the said monuments." Paterson's Laws, p. 22.

EXHIBIT 38.

Section XXXVI of the Consitution of the State of New York.

Adopted in the Year 1777.

Revision Statutes of New York, Edition of 1829, Vol I. Page 37.

"And be it further ordained, that all grants of land within in this State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand

seven hundred and seventy-five, shall be null and void; but that nothing in this Constitution contained, shall be construed to affect any grants of land, within this State, made by the authority of the said King or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them made prior to that day. And that none of the said charters shall be adjudged to be void, by reason of any non-user or misuser of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand, seven hundred and seventy-five, and the publication of this Constitution.

And further, that all such of the officers described in the said charters respectively, as, by the terms of the said charters, were to be appointed by the Governor of the Colony of New York, with or without the advice and consent of the Council of the said
88 King, in the said Colony, shall henceforth be appointed by the council established by this Constitution for the appointment of officers in this State, until otherwise directed by the Legislature."

EXHIBIT 39.

"An Act Erecting the North Ward of Perth Amboy, and a Part of the Township of Woodbridge, in the County of Middlesex, into a City; and for Incorporating the same by the Name and Title of 'The City of Perth Amboy.'"

Passed the 21st of December, 1784.

Preamble.

"1. Be it therefore enacted by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all that tract of land and country, situate and being in the county of Middlesex, and lying within the limits and boundaries hereinafter mentioned, that is to say, beginning at the meeting of the waters of Raritan river with the waters of the sound that part Staten Island from the main, to the southward of the flat or shoal that runs off from Cole's point; thence up along the sound on the eastern bank of the channel, northeasterly and northwesterly, as the same runs to Woodbridge creek; thence up the said creek to the creek that Cutter's mill stands on; then up the said creek to a line that leads to a line between George Herriott and Grace Innfley; thence along said lane until it intersects the road leading from Perth-Amboy to New Brunswick; thence along said road, southerly, to a lane leading to Florida landing; thence along the said lane to the north corner of
89 the farm or plantation late Samuel Nevill's esquire; thence along the line of the same to Raritan river, and across the same to the south bank of the channel thereof; thence down the same to the beginning; comprehending all the bays, harbors, creeks, rivers and waters within the said boundaries, shall be, and the same is hereby ordained, constituted and declared to be, from time to time

and forever hereafter, a city and town-corporate, and shall henceforth be called, known and distinguished by the name of, 'The city of Perth Amboy'; and all persons at present residing within the said limits or boundaries, or who shall hereafter reside within the same for the space of one year, and shall take the oaths or affirmations prescribed by law, for the security of the government established in this state, under the authority of the people, before the mayor, recorder, or one of the aldermen of, or before one of the judges or justices of the peace, in the said city, and shall file in the office of the clerk of the corporation, or of the town clerk, a certificate thereof, which certificate the officer administering the same is required to give, excepting only such persons who, during the late war, have been guilty of licentious cruelties in plundering or murder, contrary to the usages of civilized nations, shall from thenceforth be freemen of the said city, and shall be entitled to have and receive the same protection of their persons and properties, which the citizens of the state are entitled to have and receive therein; any law, usage or custom to the contrary in anywise notwithstanding." Paterson's Laws p. 64.

90 EXHIBIT 40.

"An Act For Dividing the State into Counties."

Passed March 7, 1788.

2d Greenleaf's Laws, N. Y., Page 148.

"I. Be it enacted by the people of the state of New York represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

That the State of New York shall be, and hereby is divided into sixteen counties, to be called by the names of New York, Albany, Suffolk, Queens, Kings, Richmond, West-chester, Orange, Ulster, Dutchess, Columbia, Washington, Clinton, Montgomery, Cumberland, and Gloucester.

II. And be it further enacted by the authority aforesaid, that the bounds and limits of the said several counties shall be as follows:

The county of New York to contain the islands called Manhattan's island, Great Barn island, Little Barn island, Manning's island, Nutten island, Bedlow's island, Bucking island and the Oyster islands, and all the land under the water within the following bounds: Beginning at Spuyten Duyvel creek, where the same empties itself into Hudson's river, on the West-chester side thereof, at low water mark, wherever the same now is or hereafter may be, and so running along the said creek at low water mark as aforesaid on the West-chester side thereof unto the East river, or sound, and from thence to cross over to Nassau island, to low water mark there as aforesaid, including Great Barn island, Little Barn island and Manning island and from thence along Nassau Island shore, at low water mark as aforesaid unto the south side of Red Hook, and from thence

across the North river, so as to include Nutten island, Bed-
91 low's island, Bucking island and the Oyster islands, to low water mark on the west side of *H*Hudson's river, or so far as the bounds of this state extend there, and so up along the west side of Hudson's river, at low water mark, or along the limits of this state, until it comes directly opposite the first mentioned creek, and thence to the place where the said boundaries first began."

EXHIBIT 41.

"An Act to Establish and Confirm the Charter, Rights, and Privileges of the Borough of Elizabeth."

Passed the 28th of November, 1789.

"1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the said free borough and town of Elizabeth, from henceforth forever, may and shall be, and is hereby made and constituted a free town and borough of itself; and that all the houses and buildings, lands, water, watercourses, ponds, pools, rivers, brooks, meadows, marshes, soils, ground and grounds, situate, lying and being in the borough and town of Elizabeth aforesaid, beginning at the mouth of Rahway river, where it falls into the Sound; thence running up said river to the mouth of Robinson's branch; thence westerly along the division line between the counties of Essex and Middlesex, until it comes to Green Brook, which divides the two counties of Essex and Somerset; thence northeasterly along Green Brook to the head thereof; thence along the line of the county of Somerset on a direct line to the lower corner of William Dockwra's patents on Passaick river, thence down Passaick river to where Minisink path crosses the same; thence on a direct line to the bluff end of the mountain called the North Mountain; from thence along the foot of the said mountain to the division line between Newark and Eliza-
92 beth-town; thence as that line runs to dividend hill; thence to the head of the creek called Bound creek; thence down the said creek to Arthur Cull bay; thence down the said bay to the sound which parts Staten Island from Elizabeth-town; and thence down the sound to where it began, shall from henceforth be the metes, bounds and jurisdictions of the said free, town and borough of Elizabeth, and that the same, as herein butted and bounded, shall be, and the same is hereby ordained, constituted and declared to be, from time to time and forever hereafter, a town corporate." Paterson's Laws, p. 94.

EXHIBIT 42.

Laws of New York, Vol. 3, Page 217, Chapter 18.

"An Act for Altering the Wards in the City of New York."

Passed the 28th day of February, 1791.

"Whereas some of the wards in the city of New York are large and populous, and others are very small, and the bounds of some of them are difficult if not impossible to be ascertained, so that alterations therein are become necessary. Therefore,

Be it enacted by the People of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

That from and after the twenty-eighth day of September next the said city of New York shall be, and hereby is divided into seven wards in the manner following, that is to say: the first ward
93 shall begin in the middle of Nassau street at the place where it is intersected by the middle of Little Queen street, and run from the said point of intersection along the middle of Nassau street to the middle of Wall street, and then south east to the middle of Broad street, and then along the middle of Broad street to the middle of Dock street, and then easterly along the middle of Dock street to a place opposite to the middle of the street leading along the east side of the exchange, and then along the middle of the last mentioned street, to the East river, and then due south to low water mark on Nassau Island, and then along Nassau Island shore, at low water mark, unto the south side of Red Hook, and then across the North river, so as to include Nutton Island, Bedlows island, Bucking island and the Oyster islands, to low water mark on the west side of the Hudson's river, or so far as the bounds of this State extend there, and so up along the west side of Hudson's river at low water mark, or along the limits of this State, to a place due west from the middle of the west end of Little Queen street, then due east to the middle of Little Queen street, and then along the middle of Little Queen street, to the place of beginning; and shall be called the first ward.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof, and so continue along the middle of Nassau street, to the middle of Crown street, and then along the middle of Crown street to Maiden Lane, and then along the middle of Maiden Lane to and across Queen street, to the middle of the street on the easterly side of the Fly Market, and then along the middle of the last mentioned street, to the East River, and then continuing the same course across the East river to low water mark on Nassau Island, and then along Nassau Island shore at low water mark to the place of beginning; and shall be called the second ward.

The third ward shall begin at the southeasterly corner of
94 the second ward, and run along the easterly bounds thereof, to the middle of Nassau street, and then along the middle of

Nassau street to a place opposite the middle of George street, and then along the middle of George street to the middle of Gold street, and then along the middle of Gold street to the middle of Ferry street, and then along the middle of Ferry street to and across Queen street and then along the middle of the street on the east side of Peck Slip Market to the East river, and then continuing the same course across the East river, to low water mark on Nassau island, and then along Nassau Island shore, at low water mark to the place of beginning; and shall be called the third ward.

The fourth ward shall begin at the northerly corner of the third ward, and run along the middle of Nassau street to a place opposite to the middle of Murray street, and then to and along the middle of Murray street to Hudsons river, and then continuing the same course across Hudson's river to low water mark, on the west side thereof, or so far as the bounds of this State extend there, and so down along the west side of Hudson's river at low water mark, or along the limits of this State, to the bounds of the first ward, and then easterly along the same to the bounds of the second ward, and then northerly along the bounds of the second and third wards to the place of beginning; and shall be called the fourth ward.

The fifth ward shall begin at the northerly corner of the third ward, and run along the bounds of the fourth ward and the middle of Chatham street to a place opposite the middle of Catherine street, and then to and along the middle of Catharine street to the East river, and then continuing the same course across the East river to low water mark on Nassau island, and then along the Nassau island shore, at low water mark, to the bounds of the third ward, and then northerly along the same, to the place of beginning; and shall be called the fifth ward.

The sixth ward shall begin at the north westerly corner of the fourth ward, and run along the northerly bounds thereof to the fifth ward, and then along the bounds of the fifth ward and the middle of the Bowery lane to a place opposite to the middle of Bayard street, and then to and along the middle of Bayard street to the middle of Rynders street; and then along the middle of Rynders street to the middle of Hester street, and then along the middle of Hester street to the middle of Great George street, and then along the middle of Great George street to the middle of a stone arch, built across the stream running out of the fresh water pond, and then along the middle of the said stream of water to Hudson's river, and then due west to low water mark on the west side of the said stream of water to Hudson's river, and then due west to low water mark on the west side of Hudson's river, or so far as the bounds of this State extend there, and so down along the west side of Hudson's river at low water mark, or along the limits of this State to the place of beginning; and shall be called the sixth ward. And

The seventh ward shall include all the residue of the said city; and shall be called the seventh ward."

EXHIBIT 43.

An Ordinance Passed by the Common Council of the City of New York, April 20, 1795, Minutes of Common Council of N. Y. for 1795, Vol. 11, p. 222.

"It being represented to the board, that certain persons
96 had set up fuyck fences in the river below low water mark on the south side of Paulus' Hook, on the Jersey shore, to the obstruction of drawing seines for the taking of fish; whereupon the following ordinance was passed by the board."

"A law to prevent the setting of fences or other obstructions, in the rivers within the limits and jurisdiction of the City of New York."

"Be it ordained, by the mayor, aldermen and commonality of the city of New York, in common council convened, and it is hereby ordained by the authority of the same, that no person shall set or place any fence, or stake, or any other thing whatsoever, in any part of the rivers or bays within the limits and jurisdiction of the said city, by which the navigation of the said rivers or bays, or the casting or drawing of seines or nets, for the taking of fish could be interrupted or obstructed; and if any person shall or do set or place any fence, or stake, or any other thing whatsoever, in any part of the said rivers or bays, contrary to this law, such person shall, on conviction, forfeit and pay as a fine for each offence, the sum of eight pounds."

"And further, That it shall be lawful for any person to take up and remove any such fence or stake, or other thing, which may at any time be found set or placed contrary to this law as aforesaid."

"Ordered, That William Sloo, who is employed by this board to take fish for the use of the almshouse and Bridewell do cause to be taken up and removed all such fences or stakes or other things, as may or shall be set in the river, in the manner aforesaid, and which may or shall obstruct or interrupt him in casting or drawing his seine as aforesaid."

97 EXHIBIT 44.

P. L. of New York, 1800, Page 7.

"An Act to Cede to the United States the Jurisdiction of Certain Islands Situate in and About the Harbour of New York.

Passed February 15, 1800.

Be it enacted by the people of the State of New York represented in the Senate and Assembly, That the following islands in and about the harbour of New York, and in and about the fortifying of which this State hath heretofore expended or caused to be expended large sums of money, to wit: All that certain island called

Bedlow's Island bounded on all sides by the waters of the Hudson river; and all that certain island called Oyster Island bounded on all sides by the waters of the Hudson river; and all that certain island called Governor's island, on which Fort Jay is situate, bounded on all sides by the waters of the East River and Hudson river, shall hereafter be subject to the jurisdiction of the United States, provided that this cession shall not extend to prevent the execution of any process, civil or criminal, issuing under the authority of this State, but such process may be served and executed on the said islands respectively, anything herein contained notwithstanding."

98 EXHIBIT 45.

Webster's Laws of New York, 1803, Volume 3, Page 225.

"An Act to Increase the Number of Wards in the City of New York, and to Equalize the Same.

Passed March 8th, 1803.

1. Be it enacted by the people of the State of New York, represented in Senate and Assembly, That from and after the first day of October next, the City of New York shall be and hereby is divided into nine wards, in the manner following, that is to say: The first ward shall begin in the middle of Pearl street, at the place where it is intersected by Pine street, and run from the said point of intersection along the middle of Pine street to and across the East river, in the same direction to low water mark on Nassau island, and then along Nassau Island shore at low water mark unto the south side of Red Hook, and then across the North River so as to include Nutton Island, Bedlow's Island, Bucking Island and the Oyster Islands, to low water mark on the west side of Hudson's River, or so far as the bounds of this State extend there, and up along the west side of Hudson's River, at low water mark, or along the limits of this State, to a place due west from the middle of the west end of Thames street; then due east to the middle of Thames street; then along the middle thereof to the middle of Broadway; then along the middle thereof to a place opposite the middle of Pine street; then along the middle thereof to the place of beginning.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof, across the East river to and along the middle of Pine street, to the
99 middle of Nassau street; then along the middle of Nassau street to a point opposite the middle of George street; then along the middle of George street to and along the middle of Gold street, to the middle of Ferry street; thence along the middle of Ferry street and Peck Slip, on a direct line across the East river, to Nassau island, at low water mark; then along Nassau island, at low water mark, to the beginning.

The third ward shall begin on the west side of Hudson's river, at the northwesterly corner of the first ward; thence due east along that line across Hudson's river to the middle of Thames street; then along the middle thereof to the middle of Broadway; then along the middle of Broadway, to a place opposite to the middle of Pine street; then along the middle of Pine street to and along the middle of Nassau street, to a place opposite to the middle of Murray street; then to and along the middle of Murray street to Hudson's river, and then continuing the same course across Hudson's river to low water mark on the west side thereof, or so far as the bounds of this state extend there, and so down along the west side of Hudson's river at low water mark, or along the limits of this state, to the place of beginning.

The fourth ward shall begin at the northerly corner of the second ward, and run along the bounds of the third ward and middle of Chatham street to a place opposite to the middle of Catherine street, and then to and along the middle of Catherine street to the East river, and continuing the same course across the East river, to low water mark, on Nassau Island; then along Nassau Island shore, at low water mark, to the bounds of the second ward; and then northerly, along the same, to the place of beginning.

The fifth ward shall begin at the northwesterly corner of the third ward, and run along the northerly bounds thereof, to the middle of Broadway; then along the middle of Broadway, to the middle of the stone arch, built across the stream running out of the fresh
100 water pond, and then along the middle of the said stream of water to Hudson's river, and then due west to low water mark on the west side of Hudson's river, or so far as the bounds of this state extend there, and so down along the west side of Hudson's river, at low water mark, or along the limits of this state, to the beginning.

The sixth ward shall begin at the place where Murray street intersects Broadway, thence along the middle of Broadway to the middle of Grand street; then along the middle of Grand street to the middle of the Bowery road; thence along the middle of Bowery road to the middle of Chatham street; then along the middle of Chatham street to a place opposite to the middle of Murray street; then along the middle of Murray street to the place of beginning.

The seventh ward shall begin at the southeasterly corner of the fourth ward; thence along the northerly boundary of said ward to the boundary of the sixth ward; then along the boundary of the sixth ward to Bowery road; thence along the middle of Bowery road to a place opposite to the middle of Stuyvesant street, then along the middle of Stuyvesant street, in front of St. Mark's Church, to the East river, and on a direct course to low water mark on Nassau Island, and then along Nassau Island shore, at low water mark, to the place of beginning.

The eighth ward shall begin at the northwesterly corner of the fifth ward, and thence along the northerly bounds of the fifth ward, and along the boundary of the sixth ward, to the middle of Bowery road; then along the middle of Bowery road to a place opposite to the middle of Love lane; then down along the middle of Love lane and

on the same course, to low water mark on the west side of Hudson's river, or so far as the limits of this State extend there, and so down along the west side of Hudson's river, at low water mark, or along the limits of this State to the beginning.

101 The ninth ward shall include all the residue of the said city.

II. And be it further enacted, That the electors of each ward shall annually choose, according to law, one alderman and one assistant, two assessors, one collector and two constables; and that not less than the mayor or recorder and five aldermen and five assistants shall be a quorum of the common council of said city, or be competent to do any business."

EXHIBIT 46.

Laws of New Jersey, 1800-6, P. 679.

"An Act to Amend the Charter Granted for the Incorporation of the Freeholders, Inhabitants of the Township of Bergen.

Whereas, the present trustees of the freeholders, inhabitants of the township of Bergen, by and with the consent and approbation of the said freeholders, duly convened, have by their petition to the legislature of the State of New Jersey, set forth that so early as the fourteenth day of January, in the twelfth year of the reign of Queen Anne, the said freeholders, inhabitants of the township of Bergen, obtained a charter of incorporation, giving and granting to them certain rights, privileges and immunities therein contained, and incorporating them the said freeholders, under the name and style of 'The Trustees of the Freeholders, inhabitants of the township of Bergen,' which said charter was shortly afterwards, to wit, on the twenty-ninth day of January, seventeen hundred and thirteen, in all things confirmed by an act of the legislature of the then colony of New Jersey, under which said charter of incorporation, cer-

102 tain real and personal property hath been since and now is held by the said freeholders; And Whereas among other provisions in the said charter, the seven persons therein named as trustees of the said freeholders, and their successors when appointed, held their office for life, and that upon the death or other avoidance of any of the said trustees, their places were to be filled up by an election of the freeholders, summoned for that purpose by the constable or constables of the town, only by the order of the surviving trustees; and the said petitioners did further set forth, that the said provision in the said charter relative to the time that the said trustees should hold their office, and the mode of continuing their succession to office, corresponded only with the monarchial period of the government in which it originated, and did not comport with the spirit of the democratic republican form of government now so happily established, and was repugnant to the feelings of the petitioners; and the said petitioners did further set forth, that the said freeholders had lately attempted to ameliorate the mode of appointing the said trustees

established by the said charter by electing them at the annual town meeting without being particularly summoned by a constable under the order of the existing trustees, and that it had become doubtful, whether or not by so doing, the existence of the corporation had not become questionable, and the important rights, interests and estates by the said corporation held and enjoyed, affected and jeopardized; the petitioners therefore prayed, that the legislature would pass a law to amend the said charter in relation to the election of the said trustees and re-establish all the rights, interests and estates, now actually held and enjoyed under the said charter, and would also confirm the last election by the freeholders of the said trustees for the current year; And Whereas it appears to the legislature that the contents of the said petition are true, and that the par-icular
103 circumstances and inconveniences under which the said incorporation labours, furnish a case highly proper and fit for the legislative amendment and interference; Therefore,

SEC. 1. Be it enacted by the Council and General Assembly of this State, and is hereby enacted by the authority of the same, That from and after the passing of this act, it shall and may be lawful for the freeholders, inhabitants of the township of Bergen, on every first Monday in May, hereafter, at the hour of ten o'clock in the forenoon, to meet and assemble at the same place where the annual town-meeting for the said township is held, and then and there by a plurality of the votes of the said freeholders, then met and assembled, to elect and choose out of the whole body of the said freeholders seven persons as trustees of the freeholders, inhabitants of the township of Bergen; which said seven persons when so elected and chosen, shall be and continue in office, for the term of one year next after such election, and for and during said term of one year, shall be invested with and shall hold and enjoy all the rights, privileges, powers and authorities whatsoever, which by the before mentioned charter of incorporation, and the act confirming the same, were granted and invested in the seven persons therein named, and their successors, duly appointed conformably to the said charter, anything in the said charter or in the act of confirming the same, to the contrary in any wise notwithstanding.

SEC. 2. And be it enacted, That in case any one or more of the offices of the said seven trustees shall become vacant by death, resignation or otherwise, it shall and may be lawful for the remaining trustees, or a majority of them, to order and direct the person officiating as clerk to their board, to put up written notices in three of the most public places in the township at least ten days before the day of meeting, advertising to the freeholders of the said township the time and place of their assembling, for the purpose of
104 choosing fit persons to fill up such office or offices which have become vacant as aforesaid; and any person or persons so elected to such vacant office or offices, shall be and remain a trustee or trustees, and shall have all the power incident to the office of a trustee till the next general election of trustees shall take place.

SEC. 3. And be it enacted, That the said charter of incorporation, with all the powers, authorities, privileges, rights, interests and im-

munities therein contained, except as herein before altered, amended and provided for, and excepting also so much of said charter as may be repugnant to the constitution of this State and of the United States, shall be and remain firm, valid, confirmed and effectual to all intents and purposes whatsoever.

SEC. 4. And be it enacted, That John Van Houten, Garret I. Van Rypen, Peter Sip, Jacob Van Wagener, Jerry Van Winkle, John Van Horn, and Casparus Prior, the persons appointed and chosen trustees of the freeholders, inhabitants of the township of Bergen, by a vote of the said freeholders, and now acting as such trustees, shall be and remain trustees of the said freeholders, inhabitants of the township of Bergen, with the same powers and authorities as if they and each of them had been appointed to the office of trustee aforesaid after the manner and form prescribed by the aforesaid charter of incorporation; and they the said above-named persons shall remain and continue trustees aforesaid till the next general election ordained and established in and by this act.

SEC. 5. And be it enacted, That all deeds, mortgages, bonds, bills, notes of hand, securities, engagements and contracts, of every nature and kind, and all interests, property and estates, real and personal, of every nature and kind, given, granted to, had, held, possessed or enjoyed, by the said incorporation, shall be vested in, continue and remain to the said incorporation, in the same manner and form, in all respects and to all intents and purposes, the same as if the aforesaid trustees and their predecessors in office had, from time to time been duly elected and appointed to office, according to the mode and plan prescribed by the aforesaid charter; and all grants, conveyances, mortgages, bonds, notes, contracts and engagements of every nature and kind, given, made done and entered into, by the persons acting as trustees of the freeholders, inhabitants of the township of Bergen, under an election of the said freeholders, shall be as firm, valid, and effectual, to all intents and purposes, against the trustees hereby ordained and established, and their successors, as if the same trustees, so elected by the said freeholders, had been duly appointed according to the manner and form prescribed in and by the charter aforesaid.

Passed at Trenton March 12, 1806."

EXHIBIT 47.

"The Act to divide the Seventh Ward into two wards, passed March 18th, 1808, Pamphlet Laws of New York, 1808, p. 58, is offered simply for the purpose of accounting for the number of wards referred to in subsequent statutes. It contains nothing else relevant to the question.

EXHIBIT 48.

"An Act Relative to the Jurisdiction of This State, Over the Territory Therein Mentioned" Passed April 6th, 1808. P. L. of N. Y., 1808, p. 136.

"Whereas, the legislature of the State of New Jersey, by an act passed on the second day of November, in the year 1806, en-
106 titled 'An Act concerning the eastern boundary of the State of New Jersey,' after reciting that King Charles the 2d had granted to James, Duke of York, sundry tracts of land in America whereof the now State of New Jersey and the now State of New York were then part, together with all the islands, soils, rivers, waters, harbors, royalties and certain powers of government in and over the same; and that the Duke of York granted the then province and now State of New Jersey, being described in the said grant of land as a tract adjacent to New England and lying and being to the westward of Long Island and Manhattan Island, and bounded on the east in part by the main sea and in part by Hudson's river, together with the said royalties and powers of government over the same, to John Lord Berkeley and Sir George Carteret, and their assigns, who used and exercised all such royalties and powers of government until they surrendered the same unto the crown of Great Britain, and that afterwards the said respective provinces of New Jersey and New York became severally independent sovereign States in virtue whereof, and the premises aforesaid, the said State of New Jersey became vested with full right and lawful authority to exercise jurisdiction in and over the said Hudson River, and the said main sea, and all the ports, harbors and havens lying adjacent to and along the Jersey shore and coasts, in such manner as belongs to a sovereign and independent state to use and exercise; and that it was highly expedient that the State of New York and the State of New Jersey should enter into a mutual agreement, in respect to the exercise of their several and respective jurisdiction and their several claims of territory, whenever they may be supposed to interfere, in such way as might best promote mutual accommodations, harmony and good understanding between them forever. To these ends therefore, A. Ogden, William S. Pennington, James Parker, Lewis Condict and Alexander C. McWhorter, Esquires, or a majority of them, were by the said
107 act, appointed commissioners, with full power and authority in behalf of New Jersey, to meet and make final agreement in regard to the premises, with commissioners on behalf of this State, to be appointed by a law of this State with like powers, if to them it shall seem expedient, in such manner as finally to settle the limits and extent within which they shall exercise their right of jurisdiction respectively, in and over all the waters lying and being between the shores of the said states respectively; and further, finally to settle and determine the eastern boundary of the State of New Jersey, as to them by mutual agreement, might seem just and reasonable, which agreement, in writing, signed and sealed by the said commissioners respectively, if made on or before the fifteenth day of No-

vember then next, should become binding on the said state, when confirmed by the respective commissioners of New York and New Jersey; and the said act having been submitted by the Governor of the said State of New Jersey to the governor of this state and by him laid before the legislature, they thereupon, by an act, passed on the third [illegible] of April last, entitled 'An Act respecting a claim for the extension of the eastern boundary of the State of New Jersey,' appointed Ezra L'Hommedieu, Samuel Jones, Egbert Benson, Simeon De Witt, and Joseph C. Yates, Esquires, or a majority of them, commissioners, with full power and authority to meet, confer and agree with the said commissioners of the State of New Jersey, respecting the said claims of the said State of New Jersey; provided, that such agreement should not be binding on this State, unless made on or before the said fifteenth day of November, and confirmed and ratified by the respective commissioners of New Jersey and New York, within one year after it shall be made. And whereas, the said commissioners, appointed by the said States respectively, met at Newark, State of New Jersey, in the month of September last,
108 and conferences and proceedings were then and there had between them respecting the said matters so referred to them, and they afterwards separated without any such agreement, as is above intended, taking place between them; and the said commissioners on the part of this State have thereupon made their report of the said conferences and proceedings, to the governor of this State, by whom the same hath been laid before the legislaturue, and inasmuch as it contains or states, 'that the commissioners on the part of the State of New Jersey, claim on behalf of their State, as comprehended in the grant from the Duke of York to Berkeley and Carteret, Staten Island, the Hudson *ad filem aquae*, and all the ports, harbors, bays and arms of the seal lying contiguous to the shore of New Jersey, and *infra fauces terrae*, as far down as Sandy Hook,' and inasmuch as it further contains or states, 'that New York has, coeval with the commencement of the colonial governments of the two states, hitherto actually and constantly exercised or possessed the jurisdiction over the river Hudson and Staten Island, and the bay between it and Long Island as a portion of her rightful territory,' as by the said report may, among other things, more fully appear; and the legislature having duly considered the said report, have thereupon adjudged it advisable for the preservation and maintenance of such jurisdiction over the said territory, consisting of the said river, island and bay, above specified, to make such provisions as are hereinafter contained.

Be it therefore enacted by the people of the State of New York, represented in the Senate and General Assembly, That it shall be and it is hereby declared to be the duty of the person administering the government of this state, for the time being, and all subordinate officers, according to their respective powers, authorities and functions, and by all lawful ways and means, to preserve, maintain and defend the jurisdiction of this state in and over the said territory,
109 until this state shall be evicted thereof by due course of law.

And be it further enacted, That if any person shall, within

the said territory oppose, disturb or hinder any public officer of this state, in the execution of his office, or do any other unlawful act as under the authority of the state of New Jersey, or by colour or pretext that the place where such act was done, was not within the jurisdiction of this state, any person so offending shall be deemed guilty of a high crime and misdemanor against this state and shall on conviction, be punished by fine or imprisonment, or both, in the discretion of the court before whom the conviction shall be had.

And be it further enacted, That the whole of the said river Hudson, southward of the northern boundary of the City of New York, and the whole of the said bay between Staten Island and Long or Nassau Island, shall so far forth be deemed to be within the jurisdiction of the City and County of New York as that all offences against this act shall be cognizable in the courts held in and for the said city and county. And further, it is hereby declared that the courts of over and terminer and general session of the peace, held in and for the said city and county, shall have cognizance of the said offenses.

And be it further enacted, That if at any time, any suit or other proceeding shall be instituted or commenced by the State of New Jersey against this state, to recover the said territory, or any parcel thereof, the person administering the government of this state for the time being, shall retain and employ counsel, and otherwise provide for the defence of this state, in every such suit or proceeding, as shall be requisite, and in order to defray the expense thereof, that he may from time to time, draw from the treasury of this state a sum or sums in the whole not to exceed three thousand dollars.

And be it further enacted, That the period which expired on the fifteenth day of November, mentioned in the above act of the
110 legislature of this state, shall be and hereby is extended to the first day of January next, and the power and authority granted in and by the said act to be the said commissioners therein named, are hereby revived and continued accordingly; in addition, however, to the proviso contained in the said act, it is hereby further provided and declared, that it shall be expressly provided in the agreement, if any, which may be made between the said commissioners and the commissioners on the part of the State of New Jersey, that nothing in such agreement contained, shall be construed to enable or authorize the United States to make or establish a port or ports on or within the said river Hudson or the said bay between Staten Island and Long or Nassau Island, otherwise than as within the limits or territory of this State."

EXHIBIT 49.

P. L. of New York, 1813. Page 342.

An Act to Reduce Several Laws, Relating Particularly to the City of New York, into One Act.

Passed April 9, 1813.

Division of the City into Wards.

"1. Be it enacted by the people of the State of New York, represented in Senate and Assembly, That the city of New York shall continue to be divided into ten wards in the manner following, that is to say: The first ward shall begin in the middle of Pearl street, at the place where it is intersected by Pine street, and run from
111 the said point of intersection along the middle of Pine street to and across the East river, in the same direction to low water mark on Nassau Island, and then along Nassau Island shore, at low water mark, unto the south side of Red Hook, and then across the North River (so as to include Nutten Island, Bedlow's Island, Bucking Island and the Oyster Islands, and all the waters of this State in the bay of New York, and the southward thereof, and not comprehended in any other county) to low water mark on the west side of Hudson's River, or so far as the bounds of this State extend there, and up along the west side of Hudson's river at low water mark, or along the limits of this state to a place due west from the middle of the west end of Thames street, then due east to the middle of Thames street, then along the middle thereof to the middle of Broadway, then along the middle thereof to a place opposite to the middle of Pine street, then along the middle thereof to the place of beginning.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof across the East River, to and along the middle of Pine street, to the middle of Nassau street, then along the middle of Nassau street, to a point opposite to the middle of George street, then along the middle of George street to and along the middle of Gold street, to the middle of Ferry street, then along the middle of Ferry street and Peck slip, on a direct line across the East River, to Nassua Island, at low water mark, then along Nassau Island at low water mark, to the place of beginning.

The third ward shall begin on the west side of Hudson's river at the northwesterly corner of the first ward, then due east along that line, across Hudson's River to the middle of Thames street, then along the middle thereof to the middle of Broadway, then along the middle of Broadway, to a place opposite to the middle of Pine street, then along the middle of Pine street to and along the middle
112 of Nassau street to a place opposite to the middle of Murray street, then to and along the middle of Murray street, to Hudsons River, and then continuing the same course across Hudson's

River, to low water mark on the west side thereof, or so far as the bounds of this state extend there, and so down along the west side of Hudson's river at low water mark, or along the limits of this State, to the place of beginning.

The fourth ward shall begin at the northerly corner of the second ward and run along the bounds of the third ward, and middle of Chatham street, to a place opposite to the middle of Catherine street, and then to and along the middle of Catherine street, to the East river, and continuing the same course across the East river to low water mark, on Nassau Island; then along Nassau Island shore at low water mark, to the bounds of the second ward, and then northerly along the same to the place of beginning.

The fifth ward shall begin at the northwesterly corner of the third ward, and run along the northerly bounds thereof to the middle of Broadway, then along the middle of Broadway to the middle of the stone arch built across the stream running out of the fresh water pond, and then along the middle of the said stream of water, to Hudson's river, and then due west to low water mark on the west side of Hudson's River, or so far as the bounds of this State extend there, and so down along the west side of Hudson's River, at low water mark, or along the limits of this state to the place of beginning.

The sixth ward shall begin at the place where Murray street intersects Broadway; thence along the middle of Broadway to the middle of Grand street, then along the middle of Grand street to the middle of the Bowery road; thence along the middle of the Bowery road to the middle of Chatham street, then along the middle of Chatham street, to a place opposite to the middle of Murray street, then
113 along the middle of Murray street, to the place of beginning.

The seventh ward shall begin at the southeasterly corner of the fourth ward; thence along the easterly boundary of the said ward, up Catherine street to the middle of Division street, then along the middle of Division street to the middle of Grand street, and then along the middle of Grand street to the East River, and continuing the same course across the East River, to low water mark on Nassau Island, then along Nassau Island shore, at low water mark, to the place of beginning.

The eighth ward shall begin at the northwesterly corner of the fifth ward, and thence along the northerly bounds of the fifth ward, and along the boundary of the sixth ward to the middle of the Bowery road; then along the middle of the Bowery road to a place opposite to the middle of Love Lane, then down along the middle of Love Lane, and on the same course to low water mark on the west side of Hudson's river, or so far as the limits of this state extend there, and so down along the west side of Hudson's river, at low water mark, or along the limits of this State, to the place of beginning.

The ninth ward shall include all the part of the said city which lies to the northward and eastward of a line beginning at the northwesterly corner of the eighth ward, and running along the northerly bounds thereof, to the middle of Bowery road, then down Bow-

ery road to a place opposite to the middle of a street or road called Stuyvesant street, then along the middle of the said Stuyvesant street in front of St. Mark's Church to the East River, and continuing the same course across the East river, to low water mark on Nassau Island.

The tenth ward shall include all the residue of the said city.

II. And be it further enacted, That the electors of each ward shall annually choose, according to law, one alderman and one
114 assistant; two assessors, one collector and two constables; and that not less than the mayor or recorder, and five aldermen, and five assistants, shall be a quorum of the common council of the said city, or to be competent to do any business.

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EXHIBIT 50.

Section XIV of the Constitution of the State of New York. Adopted in the Year 1821.

Revised Statutes of New York, Edition of 1829, Vol. 1, Page 54.

"All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this state made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic or corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice."

115 EXHIBIT 51.

Laws of New York, Vol. 10, Page 286.

An Act to Equalize and Increase the Number of Wards in the City of New York.

Passed April 16, 1825.

"I. Be it enacted by the people of the State of New York represented in Senate and Assembly, That the City of New York shall be divided into twelve wards, in the manner following, that is to say: The first ward shall begin in the middle of Broadway, at a point where it is intersected by the middle of Liberty street, and runs from the said point of intersection, through the middle of Liberty street, southeasterly, to the middle of Maiden-lane; thence down the mid-

dle of Maiden-lane, and from thence in a straight line, running in the same direction across the East river, to low water mark on Nassau Island; and thence along Nassau Island shore, at low water mark, to the south side of Red Hook; and thence across Hudson river (so as to include Nutten Island, Bedlow's Island, Bucking Island, and the Oyster Islands, and all the waters of this State in the bay of New York, and to the southward thereof, and which are not comprehended in any other county), to low water mark on the west side of Hudson's river, or so far as the bounds of this state extend; thence up along the west side of Hudson's river, at low water mark, or along the limits of this state, to a place due west from the middle of the west end of Liberty street; thence to the middle of Liberty street; thence through the middle of Liberty street to the middle of Broadway, *a* the place of beginning.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof, across the East river, to the middle of Broadway; thence up the middle of
116 Broadway, to a point opposite the middle of Chatham street; thence through the middle of Chatham street, to a point opposite to the middle of Spruce (formerly George) street; thence down the middle of Spruce street, to the middle of Gold street; thence through the middle of Gold street, to a point opposite to the middle of Ferry street; thence through the middle of Ferry street, in a line running in the same direction across the East river, to Nassau Island, to low water mark; thence along Nassau Island, at low water mark, to the place of beginning.

The third ward shall begin on the west side of Hudson's river, at the northwesterly corner of the first ward, and running thence due east, to the middle of Liberty street; thence through the middle of Liberty street, to the middle of Broadway; thence through the middle of Broadway, to a point opposite to the middle of Reed street; thence through the middle of Reed street, in a line running in the same direction across Hudson's river to low water mark, on the west side thereof, or so far as the bounds of the state extend; thence down the west side of Hudson's river, at low water mark, or along the limits of this state, to the place of beginning.

The fourth ward shall begin at the northerly corner of the second ward, and run through the middle of Chatham street, to a point opposite to the middle of Catherine street; and thence through the middle of Catherine street, in a line running in the same direction across the East river to low water mark, on Nassau Island; thence along Nassau Island shore, at low water mark, to the bounds of the second ward, and thence northwesterly along the bounds of the second ward, to the place of beginning.

The fifth ward shall begin at the northwesterly corner of the third ward, and run along the northerly bounds thereof, to the middle of Broadway; thence through the middle of Broadway to the middle of Canal street; thence through the middle of Canal street to Hudson's river; thence due west to low water mark, at the west side of
117 Hudson's river, or so far as the bounds of this state extend; thence down along the west side of Hudson's river, at low

water mark, or along the limits of this state, to the place of beginning.

The sixth ward shall begin at a point in the middle of Broadway, where it is intersected by the middle of Reed street, and runs thence through the middle of Broadway, to where it is intersected by the middle of Grand street; thence through the middle of Grand street to the middle of the Bowery road; thence through the middle of the Bowery road, to the middle of Chatham street; thence through the middle of Chatham street, to the middle of Broadway; thence through the middle of Broadway to the place of beginning.

The seventh ward shall begin at the southeasterly corner of the fourth ward, and run thence along the easterly boundary of the fourth ward, to the middle of Division street; thence through the middle of Division street to the middle of Grand street; thence through the middle of Grand street, in a line running in the same direction, across the East river, to low water mark on Nassau Island; thence along Nassau Island shore, at low water mark, to the place of beginning.

The eighth ward shall begin at the northwesterly corner of the fifth ward, and run thence along the northerly bounds of the said ward, to the middle of Broadway; thence through the middle of Broadway, to a point opposite to the middle of Grand street; thence through the middle of Grand street, to the middle of the Bowery road; thence through the middle of the Bowery road, to a point opposite to the middle of North street, and of Houston street, as ordered to be extended and continued; thence through the middle of said street, so ordered to be extended and continued, and through the middle of Houston street, to a point opposite to the middle of Hammersley street; thence through the middle of Ham-
118 mersley street, to Hudsons river; thence due west to low water mark on the west side of Hudson's River, or so far as the limits of this State extend; thence down along the west side of Hudsons River, at low water mark, or along the limits of this State, to the place of beginning.

The ninth ward shall begin at the northwesterly corner of the eighth ward, and run thence along the northerly bounds of the said ward to the middle of the Bowery road; then through the middle of the Bowery road to a point opposite to the middle of Fourteenth street to Hudson's River; thence due west to low water mark on the west side of Hudsons river, or so far as the limits of this State extend; thence down along the west side of Hudson's river at low water mark, or along the limits of this State, to the place of beginning.

The tenth ward shall begin at the northeasterly corner of the seventh ward, and run thence along the easterly and northerly bounds of the said ward to the middle of the Bowery road; thence through the middle of the Bowery road to where it is intersected by the middle of Rivington street; thence through the middle of Rivington street in a line running in the same direction across the East river to low water mark on Nassau Island, and thence along Nassau Island shore, at low water mark as aforesaid to the place of beginning.

The eleventh ward shall begin at the northeastern corner of the tenth ward, and run thence along the northeasterly bounds of the said ward to the middle of the Bowery road; thence through the middle of the Bowery road to where it is intersected by the middle of Fourteenth street; thence through the middle of Fourteenth street, in a line running in the same direction across the East river, to low water mark on Nassau Island, and thence along Nassau Island shore, at low water mark as aforesaid, to the place of beginning.

The twelfth ward shall include all the residue of the said
119 city.

II. And be it further enacted, That the electors of each ward shall annually choose, according to law, one alderman and one assistant, two assessors, one collector and two constables; and that on and after the last Monday in December next, not less than the Mayor or recorder of the said city, and seven aldermen and seven assistants, shall be a quorum of the common council of the said city, or be competent to do any business.

III. And be it further enacted, That the assistant justices already appointed, or hereafter to be appointed (pursuant to the act of the fourth of January, 1820, entitled "An Act to amend an act, entitled 'An act to reduce several laws relating particularly to the city of New York, into one act,'" so far as it relates to assistant justices), for the fifth and eighth wards, shall have and exercise jurisdiction in the fifth, eighth and ninth wards, as herein established, to all and every intent and purpose whatsoever; and that the justices appointed, or hereafter to be appointed under the said act, for the seventh and tenth wards, shall have and exercise jurisdiction in the seventh, tenth, and eleventh wards, as herein established, to all and every intent and purpose whatsoever; and that the justices appointed in and for the ninth ward of the said city, shall only have jurisdiction in the twelfth ward of the said city, as herein established, and shall hereafter be appointed for such twelfth ward, and not for the ninth ward as heretofore; provided, however, that this section shall not take effect until after the expiration of the period during which the said justices now are authorized to hold their offices.

IV. And be it further enacted, That all laws relating to the wards of the said city, shall be considered as applying to the wards, and the number of wards, as they are established in and by this act; and that all powers that are to be executed, or appointments
120 to be made in or for the several wards of the said city, shall be executed, made and done for the additional wards herein established, in like manner as if the number of wards in any such number that may be named in any such law.

V. And be it further enacted, That the assistant justices of the ninth ward shall have jurisdiction in all civil actions now cognizable before the said justices, where the amount shall not exceed fifty dollars in the like manner as the said several other assistant justices of the said city now have jurisdiction, and subject to the like rights of appeal, as is now provided by law in relation to the said last mentioned justices."

Exhibit 52.

Revised Statutes of N. Y. (1829), Vol. 1, p. 61.

"An Act Concerning the Territorial Limits and Divisions, the Civil Polity, and the Internal Administration of this State."

"Whereas it is expedient that the several statutes of this State, relating to its territorial limits and divisions, its civil polity, and its internal administration, should be consolidated and arranged in appropriate chapters, titles and articles; and that the language thereof should be simplified and that omissions and other defects should be supplied and amended; therefore

The people of the State of New York represented in Senate and General Assembly, do declare and enact as follows:

121

Chapter I.

Of the Boundaries of the State and its Territorial Jurisdiction.

Title I.

Of the Boundaries of the State.

Sec. 1. It being deemed useful for the information of the citizens and officers of this State, that its boundaries, so far as its jurisdiction is now asserted, should be declared, it is therefore declared, that the State of New York is bounded as follows: Beginning at Lyon's Point in the mouth of a brook or river called Byram's River, where it falls into Long Island Sound and running thence up along said river, etc., (along the boundaries of Connecticut, Massachusetts and Vermont to St. Lawrence river, thence westerly and southerly along division line between United States and British dominions, through Lakes Erie and Ontario to boundary line of Pennsylvania, thence easterly along said line to Delaware river, thence down said river "to the termination of the east bank of the Delaware River on a line run in the year 1774 by Wm. Wickham and Samuel Gale, commissioners on the part of the then colony of New York and John Stevens and Walter Rutherford, commissioners on the part of the then colony of New Jersey; thence along said line to a rock on the west side of Hudson's river in latitude of 41° north marked by said commissioners thence southerly along the west shore, at low water mark of Hudson's river, of the Kill Von Kull of the Sound between Staten Island and New Jersey and of Raritan Bay to Sandy Hook and thence to Staten Island and the Islands of Meadow on the west side thereof, Shooters Island, Long Island, the Isle of Wight,
122 now called Gardiner's Island, Fisher's Island, Shelter Island, Plumb Island, Robin's Island, Ram Island, the Gull Islands, and all the islands and waters in the bay of New York and within the bounds above described."

EXHIBIT 53.

Following the foregoing description of the boundaries of the State is "An Act Concerning the Sovereignty and Jurisdiction of the State," Being Title II of Chapter I, Revised Statutes of N. Y. (1829), Vol. 1, p. 65.

"SECTION 1. The sovereignty and jurisdiction of this State extend to all the places within the boundaries thereof as declared in the preceding title, but the extent of such jurisdiction over places that have been or may be ceded to the United States shall be qualified by the terms of such cession.

SEC. 2. It shall be the duty of the governor and of all the subordinate officers of the State to maintain its sovereignty and jurisdiction."

EXHIBIT 54.

Section 1, Consisting of Fourteen Paragraphs of Title V, Chapter II, Part 1, of the Revised Statutes of the State of New York, Edition of 1829, Vol. 3, p. 121.

123 "SECTION 1. The City of New York contains all that part of this state comprehended within the bounds of the county of New York; and is divided into fourteen wards, in the manner following, that is to say,

1. The first ward shall begin in the middle of Broadway, at a point where it is intersected by the middle of Liberty street, and runs from the said point of intersection, through the middle of Liberty street, southeasterly, to the middle of Maiden Lane; then down the middle of Maiden Lane, and from thence in a straight line running in the same direction across the East river, to low water mark on Nassau or Long Island; and thence along Nassau or Long Island shore, at low water mark, to the south side of Red Hook; and then across Hudson's river, so as to include Nutten Island, Bedlow's Island Bucking Island, and the Oyster Islands, and all the waters of this State in the bay of New York, and to the southward thereof, and which are not comprehended in any other county, to low water mark on the west side of Hudson's river, or so far as the bounds of this state extend; then up along the west side of Hudson's river at low water mark, or along the limits of this State, to a place due west from the middle of the west end of Liberty street; then to the middle of Liberty street; then through the middle of Liberty street to the middle of Broadway at the place of beginning.

2. The Second Ward shall begin at the southeasterly corner of the First ward, and run thence along the easterly bounds thereof, across the East river to the middle of Broadway; then up the middle of Broadway, to a point opposite the middle of Chatham street; then through the middle of Chatham street, to a point opposite the middle of Spruce (formerly George) street; then down the middle

of Spruce street, to the middle of Gold street; then through the middle of Gold street, to a point opposite to the middle of Ferry
124 street; then through the middle of Ferry street, in a line running in the same direction across the East river, to Nassau or Long Island, to low water mark, then along Nassau or Long Island, at low water mark, to the place of beginning.

3. The Third ward shall begin on the west side of Hudson's river, at the northwesterly corner of the First ward, and running thence due east, to the middle of Liberty street; then through the middle of Liberty street to the middle of Broadway; then through the middle of Broadway, to a point opposite to the middle of Reed street; then through the middle of Reed street, in a line running in the same direction across Hudson's river, to low water mark, on the west side thereof, or so far as the bounds of the State extend; then down the west side of Hudson's river at low water mark, or along the limits of this state, to the place of beginning.

4. The Fourth ward shall begin at the northerly corner of the second ward, and run thence through the middle of Chatham street, to a point opposite to the middle of Catherine street; and then through the middle of Catherine street, in a line running in the same direction across the East river, to low water mark, on Nassau or Long Island; then along Nassau or Long Island shore, to low water mark, to the bounds of the second ward; and then northwesterly along the bounds of the second ward to the place of beginning.

5. The Fifth ward shall begin at the northwesterly corner of the third ward and run thence along the northerly bounds thereof, to the middle of Broadway; then through the middle of Broadway, to the middle of Canal street; then through the middle of Canal street to Hudson's river; then due west to low water mark, on the west side of Hudson's river, or so far as the bounds of this state extend; then down along the west side of Hudson's river, at low water mark, or along the limits of this state, to the place of beginning.

125 6. The Sixth ward shall begin at a point in the middle of Broadway, where it is intersected by the middle of Canal street, and run thence through the middle of Canal street, to where it is intersected by the middle of Collect street; then through the middle of Collect street, to the middle of Pump street; then through the middle of Pump street, to the middle of the Bowery road; then through the middle of the Bowery road, to the middle of Chatham street; then through the middle of Chatham street, to the middle of Broadway; and then through the middle of Broadway to the place of beginning.

7. The Seventh ward shall begin at the southeasterly corner of the fourth ward and run thence along the easterly boundary of the fourth ward, to the middle of Division street; then through the middle of Division street, to the middle of Grand street; then through the middle of Grand street, in a line running in the same direction across the East River, to low water mark on Nassau or Long Island; then along Nassau or Long Island shore at low water mark, to the place of beginning.

8. The Eighth ward shall begin at the northwesterly corner of the

Fifth ward, and run thence along the northerly bounds of the said ward, through Canal street to the middle of Broadway; then through the middle of Broadway to a point opposite to the middle of Houston street; then through the middle of Houston street to a point opposite to the middle of Hamersley street; then through the middle of Hamersley street to Hudson's river; then due west to low water mark, on the west side of Hudson's river, or so far as the limits of this State extend; then down along the west side of Hudson's river at low water mark, or along the limits of this State, to the place of beginning.

9. The ninth ward shall begin at the northwesterly corner of the eighth ward, and run thence along the northerly bounds of the said ward through the middle of Hamersly and Houston streets,
126 and continuing on through the middle of Houston street, to the middle of the Bowery road; then through the middle of the Bowery road to a point opposite the middle of Fourteenth street; then through the middle of Fourteenth street to Hudson's river; then due west to low water mark on the west side of Hudson's river, or so far as the limits of this State extend; then down along the west side of Hudson's river at low water mark, or along the limits of this State, to the place of beginning.

10. The Tenth ward shall begin at a point in the middle of the Bowery road, opposite to the middle of Division street; then through the middle of Division street to the middle of Norfolk street; then through the middle of Norfolk street to the middle of Rivington street; then through the middle of Rivington street to the middle of the Bowery road; then through the middle of the Bowery road to the place of beginning.

11. The Eleventh Ward shall begin at the northeasterly corner of the tenth ward, being at the intersection of Norfolk and Rivington streets, and run thence through the middle of Rivington street to the middle of the Bowery road; then through the middle of the Bowery road to where it is intersected by the middle of Fourteenth street, then through the middle of Fourteenth street, in a line running in the same direction, across the East river to low water mark on Nassau Island; then along Nassau Island shore, at low water mark, to a point opposite the middle of the east end of Rivington street; then in a direct line across the East river, through the middle of Rivington street, to the place of beginning.

12. The Twelfth Ward shall include all that part of the city and county of New York, lying to the northward and eastward of the middle of Fourteenth street.

13. The Thirteenth Ward shall begin at the northeasterly
127 corner of the seventh ward, and run thence along the easterly and northerly line of the said ward through the middle of Grand and Division streets; to the middle of Norfolk street; then through the middle of Norfolk street to where it is intersected by the middle of Rivington street; then through the middle of Rivington street, in a line running in the same direction across the East river, to low water mark on Nassau Island; and then along the shore of said island, at low water mark, to the place of beginning.

14. The Fourteenth Ward shall begin at a point in the middle of the Bowery road, where it is intersected by the middle of Pump street; then through the middle of the Bowery road to a point opposite the middle of Houston street; then through the middle of Houston street to where it is intersected by the middle of Broadway; then through the middle of Broadway to where it is intersected by the middle of Canal street; and then through the middle of Canal; Collect and Pump streets, being along the northerly bounds of the Sixth ward, to the place of beginning."

EXHIBIT 55.

New York Laws of 1833, Chapter VI, Page 6.

"An Act Concerning the Territorial Limits and Jurisdiction of the State of New York and the State of New Jersey.

Passed January 18, 1833.

The people of the State of New York represented in Senate and Assembly, do enact as follows:

SECTION 1. The Governor shall appoint three commissioners, who shall have full power, on the part of the State of New York,
128 to meet commissioners appointed or who may be appointed, under or by virtue of a law of the legislature of the state of New Jersey, to negotiate and agree respecting the territorial limits and jurisdiction of the state of New York and the state of New Jersey. And if by death, resignation or otherwise, a vacancy do happen among those appointed by the state of New York, the governor, or person administering the government of this state, is hereby authorized to supply the same.

SEC. 2. The said commissioners on the part of the state of New York, or the major part of them, shall have full power and authority to agree upon, settle and determine the limits and jurisdiction between the said states, as to them may seem just; and their agreement in the premises in writing, signed and sealed by the said commissioners of both states, or a majority of them respectively, if made on or before the first Tuesday of January next, shall become binding on the State of New York, when confirmed by the respective Legislatures of New York and New Jersey, and approved by Congress.

SEC. 3. The said commissioners shall meet at such time and place as they may agree upon.

SEC. 4. The Governor, or person administering the government of this state, shall transmit to the Governor, or person administering the government of the state of New Jersey, a copy of this Act.

SEC. 5. The commissioners who act in the premises, shall each be entitled to receive five dollars per day for every day they may be employed in discharging their duties under this act, and fifteen cents per mile for every mile they shall necessarily travel, in going to and returning from any meeting of the said commissioners, to be paid by the treasurer, on the warrant of the comptroller."

129 EXHIBIT 56.

"An Act for the Settlement of the Territorial Limits and Jurisdiction Between the States of New Jersey and New York.

"Whereas the legislature of the state of New York have recently passed a law authorizing the governor of that state to appoint commissioners to meet commissioners on the part of this state, to negotiate and agree respecting the territorial limits and jurisdiction of the state of New Jersey and the state of New York. And Whereas it is expedient and desirable that the difference heretofore existing on this subject should be amicably and speedily adjusted; therefore,

"SEC. 1. Be it Enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the governor of this State, or the person administering the government of the same, be, and he is hereby authorized to appoint three commissioners, with full power, on the part of New Jersey, to meet commissioners, appointed or to be appointed under or by virtue of a law of New York, passed January the eighteenth, eighteen hundred and thirty-three, and with them to negotiate and agree respecting the territorial limits and jurisdiction between the said states, as to them may seem just; and if, by death, resignation, or otherwise, a vacancy do happen among those appointed by the state of New Jersey, the governor, or person administering the government of this State, is hereby authorized to supply the same.

"SEC. 2. And be it enacted, That the said Commissioners on the part of the State of New Jersey, or a major part of them, shall have full power and authority to agree upon, settle and determine the limits of territory and jurisdiction between the said States, as to them may seem just; and their agreement in the premises in
130 writing, signed and sealed by the said commissioners of both states, or a majority of them, respectively, if made on or before the first Tuesday of January next, shall become binding on this State, when confirmed by the respective legislatures of New Jersey and New York, and approved by Congress.

"SEC. 3. And be it enacted, That the said commissioners shall meet at such time and place as they may agree upon, and shall each be entitled to receive five dollars per day, for every day they may be employed in discharging their duties under this act, and fifteen cents per mile for every mile they shall necessarily travel in going to, and returning from, any meeting of the said commissioners, to be paid by the treasurer, on the warrant of the governor, or person administering the government of this State.

"SEC. 4. And be it enacted, That the governor or person administering the government of this State, shall transmit to the governor of the State of New York a copy of this act.

Passed February 6, 1833." Laws of N. J., 1833, p. 54.

EXHIBIT 57.

Pamphlet Laws of New York for 1834, Page 8.

"An Act to Confirm the Agreement Entered into by the Commissioners Appointed by this State and Commissioners Appointed by the State of New Jersey to Settle the Boundary Line Between New York and New Jersey.

Passed February 5, 1834.

The People of the State of New York represented in Senate and Assembly do enact as follows:

131 This agreement entered into between the commissioners appointed by this State and the commissioners appointed by the State of New Jersey to settle the boundary line between New York and New Jersey, in words following, viz:

(Agreement in full, as in Revision of N. J., p. 1178,) is hereby ratified and confirmed on the part of the State of New York."

EXHIBIT 58.

"An Act to Ratify and Confirm an Agreement Made Between the Commissioners Appointed by the Governor of the State of New York and the Commissioners Appointed by the Governor of the State of New Jersey, Respecting the Territorial Limits and Jurisdiction Between the said States.

Passed February 26, 1834.

"Whereas, commissioners duly appointed on the part of the state of New York, and commissioners duly appointed on the part of New Jersey, for the purpose of agreeing upon, and settling the jurisdiction and territorial limits of the two states, have executed certain articles, two copies for each state, which are contained in the following words:

"Agreement made and entered into, by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, commissioners, duly appointed on the part and behalf of the state of New York, in pursuance of an act of the legislature of the said state, entitled 'An act concerning the territorial limits and jurisdiction of the state of New York, and the state of New Jersey,' passed January eighteen, eighteen hundred and thirty-three, of the one part, and Theodore Frelinghuysen, James Parker, and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the state of New Jersey, in pursuance of an act of the legislature of the said

132 state, entitled 'An act for the settlement of the territorial limits and jurisdiction between the states of New Jersey and New York,' passed February sixth, eighteen hundred and thirty-three, of the other part.

"3. Art. I. The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the water between Staten Island and New Jersey, and the Raritan bay, to the main sea, except as hereinafter otherwise particularly mentioned.

"4. Art. II. The state of New York shall retain its present jurisdiction of and over Bedlow's and Ellis' islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that state.

"5. Art. III. The state of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the waters of Hudson river, lying west of Manhattan Island and to the south of the mouth of Spuytenduyvel creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the state of New Jersey, that is to say:

(1.) The state of New Jersey shall have the exclusive right of property in and to the land under water, lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan Island and New Jersey.

"(2.) The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said state, and of and over all
133 vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the state of New York, which now exist or which may hereafter be passed.

"(3.) The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters; provided, that the navigation be not obstructed or hindered.

"6. Art. IV. The State of New York shall have exclusive jurisdiction of and over the waters of the Kill von Kull, between Staten Island and New Jersey, to the westernmost end of Shooter's island, in respect to such quarantine laws and laws relating to passengers as now exist, or may hereafter be passed under the authority of that State, and for executing the same; and the said State shall also have exclusive jurisdiction, for the like purposes, of and over the waters of the sound from the westernmost end of Shooter's Island to Woodbridge creek, as to all vessels bound to any port in the said State of New York.

"7. Art. V. The State of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan bay, lying westward of a line drawn from the lighthouse at Prince's bay to the mouth of Matavan

creek, subject to the following rights of property and jurisdiction of the state of New York, that is to say:

"(1.) The State of New York shall have the exclusive right of property in and to the land under water lying between the middle of the said waters and Staten Island.

"(2.) The State of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all
134 vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New Jersey, which now exist or which may hereafter be passed.

"(3.) The State of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters; provided, that the navigation of the said wat*a*ers be not obstructed or hindered.

"8. Art. VI. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed within that State, or on board of any vessel being under the exclusive jurisdiction of that State, as aforesaid, or committed against the regulations made or to be made by that State, in relation to the fisheries mentioned in the third article; and also civil process issued under authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New York, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New York, or fastened to a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the State of New York.

"9. Art. VII. Criminal process issued under the authority of the State of New York against any person accused of an offense committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid, or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the State of New
135 York against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the state of New Jersey.

"10. Art. VIII. This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively, and when approved by the Congress of the United States.

"Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that state, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that state) at the city of New York, this sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three, and of the Independence of the United States the fifty-eighth.

THEODORE FRELINGHUYSEN.
JAMES PARKER.
LUCIUS Q. C. ELMER.
B. F. BUTLER.
PETER AUGUSTUS JAY.
HENRY SEYMOUR.

"Therefore—That the aforesaid agreement, and every article, clause, matter, and thing therein contain, shall be and the same is hereby fully and amply ratified and confirmed on the part of the state of New Jersey."

Confirmed by New York, February 5, 1834.

Approved by the Congress of the United States, June 28, 1834.

Rev. of N. J., 1877, p. 1178.

136 EXHIBIT 59.

June 28, 1834. "Chap. CXXVI. An Act Giving the Consent of Congress to an Agreement or Compact Entered into Between the State of New York and the State of New Jersey, Respecting the Territorial Limits and Jurisdiction of said States.

Whereas commissioners duly appointed on the part of the State of New York and commissioners duly appointed on the part of the State of New Jersey for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, have executed certain articles which are contained in the words following, viz.:

(Agreement in full, as in Revision of N. J., p. 1178.)

And Whereas the said agreement has been confirmed by the Legislatures of the said States of New York and New Jersey respectively, therefore:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress of the United States is hereby given to the said agreement, and to each and every part and article thereof, Provided, That nothing therein contained shall be construed to impair or affect the right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

Approved June 28, 1834."

U. S. Statutes at Large, vol. 4, p. 808.

137 EXHIBIT 60.

"An Act to Create the County of Hudson."

"Whereas, the inhabitants of the township of Bergen and Lodi, of Jersey City, and the villages of North Bergen, Harsimus, Hoboken, West Hoboken, Weehawken, New Durham, Secaucus, and Greenville, respectively, have by their petitions set forth, that by reason of the great increase of business from year to year, calling for the attendance of parties, jurors, and witnesses, at distances varying from twelve to twenty miles, and the proximity of the city of New York requiring the exercise of a rigid police, they are at an inconvenient distance from the county town, and the courts of justice, and have prayed that a new county should be erected, Therefore,

SEC. 1. Be it enacted by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all that part of the county of Bergen, as the same stood before the passing of this act, contained within the following boundaries, viz.: beginning at the northeasterly corner of the present township of Bergen, in the boundary line between this state and the state of New York; thence running westwardly on the line which divides the said township of Bergen from the township of Hackensack, to the Hackensack river; thence down the middle of the said Hackensack river, to the middle of the turnpike road of the New Barbadoes Toll-Bridge Company; thence westwardly along the middle of the said turnpike road, in the various courses thereof, to the middle of the abutment of the bridge across the Passaic, opposite to the village of Acquackononck; thence, along the middle of said bridge to the point where it meets the line between the present county of Passaic and Bergen; thence down the said Passaic river and Newark bay, in the several courses thereof, on the boundary lines between the county of
138 Bergen, as the same stood before the passing of this act, and the counties of Passaic and Essex, to Kill-Van-Kull; thence, eastwardly, on the boundary line between this state and the state of New York, to the Hudson river; thence, northwardly, continuing on the said boundary line between this state and the state of New York, up the Hudson river to the place of beginning, be and the same is hereby erected into a separate county, to be called the county of Hudson; and said lines shall hereafter be the division lines between the counties of Essex, Passaic, and Bergen, and the State of New York, and the said county of Hudson, respectively."

Passed February 22, 1840, Rev. of N. J., 1877, p. 205.

EXHIBIT 61.

"An Act to incorporate the city of Perth Amboy."
Passed February 27, 1844, P. L. of N. J., 1844, p. 122.

EXHIBIT 62.

"An Act to Incorporate the Town of Bergen."

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That all that part of the county of Hudson which now constitutes the township of Bergen, be and the same is hereby formed into a town corporate, to be designated and known in law as 'The Town of Bergen,' and all the citizens of this State who are now, or hereafter may be, inhabitants within said limits, shall be and they are hereby constituted a body politic and corporate in law, by the name of 'The Town of Bergen,' instead of as here-
139 tofore by the name of 'The Inhabitants of the Township of Bergen, in the County of Hudson'; and they shall have all the rights and privileges of any township of this State, not hereby expressly abrogated, altered or avoided, and they shall have all the powers of a municipal corporation necessary for carrying out the objects of this act; and for general purposes not provided for by this act, the said 'The Town of Bergen' shall be considered a township."
Approved March 11, 1862, Laws of N. J., 1862, p. 162.

EXHIBIT 63.

"An Act to Create from the Town of Bergen, in the County of Hudson, a New Township to be Called the Township of Greenville."

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That so much of the act entitled 'An act to incorporate the town of Bergen, approved March eleventh, eighteen hundred and sixty-two, as applies or was intended to apply, to all that southwestern part or portion of the township of Bergen, as it existed immediately previous to the passage of said act, and comprised, or nearly so, within the limits of what is known as Washington school district, number three, bounded on the southeast by New York harbor, on the west by the Morris Canal and lands of James Currie, Esq., on the northeast by Newark bay and the Hackensack river, on the northeast by a road or lane known as Myrtle avenue, with a continued line running southeasterly from said avenue to New York harbor, and northwesterly from said avenue to the Hackensack river; this last boundary being the unadjusted dividing line between the 'town of Bergen' and the township hereinafter incorporated, be and the same is hereby repealed.

"2. And be it enacted, That all that part or portion of the
140 late township of Bergen, now 'town of Bergen,' Hudson County, and embraced within the limits as described and

bounded in section first of this act, be and the same is hereby created into a township to be designated and known in law as the inhabitants of the township of Greenville; and the inhabitants of the said township of Greenville are hereby constituted a body politic and corporate in law, and shall be entitled to all the rights, powers, authority and privileges, and subject to the same laws as were the inhabitants of the township of Bergen previous to the passage of the act incorporating the 'town of Bergen,' and all other existing laws of the state not conflicting with this act."

Approved *aMrch* 18, 1863, Laws of N. J., 1863, p. 306.

EXHIBIT 64.

"An Act to Incorporate the City of Bergen."

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the city of Bergen shall hereafter consist of all the territory included within the following boundaries, that is to say: Beginning at the most westerly corner of the city of Hudson, in the county of Hudson, where the New Jersey Railroad crosses the Hackensack river; thence easterly along the centre line of the New Jersey railroad its several courses to the centre of Mill Creek; thence southerly along the centre of Mill Creek its several courses into New York bay, until it intersects the boundary line of the state of New York; thence southerly along said boundary line of the state of New York until it intersects the dividing line between the township of Greenville and the city of Bergen; thence westerly along said line
141 to the middle of the Hackensack river; thence northerly along the middle of the Hackensack river its several courses to the place of beginning, comprising the same territory heretofore known and incorporated as 'The Town of Bergen,' and the same is hereby formed into a city corporate, to be designated and known in law as 'The City of Bergen.'"

Approved March 11, 1868, Laws of N. J., 1868, p. 314.

EXHIBIT 65.

"An Act to Reorganize the Local Government of Jersey City.

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Jersey City shall hereafter consist of the territory comprised within the following boundaries, to wit: beginning in the middle of the Hudson river, at a point bearing south sixty degrees east from the southwest corner of block number seventy-six, as shown on the map of property of Charles Van Vorst; thence running northerly up the middle of the Hudson river to a point bearing south sixty degrees east from the northerly mouth of Harsimus or Mill creek; thence north sixty degrees west to the said Mill creek; thence up the middle of the said creek to the first branch thereof; thence in a northwesterly direction to the

Hoboken embankment; thence southwesterly along the southerly side of said embankment to the easterly boundary line of Hudson City; thence northerly along said boundary line to a point opposite the centre of Tenth street, in the city of Hoboken; thence westerly in a direct line to the centre of the Paterson and New York plank road; thence along the centre of said plank road to the centre of Paterson avenue; thence northwesterly along the centre of said avenue to the centre of Secaucus road; thence northerly
142 along the centre of said road to the middle of Penhorn creek; thence southerly along the centre of Penhorn creek to the centre of Hackensack river; thence along the centre of the Hackensack river southerly, its several courses, to the present boundary line between Jersey City and Greenville; thence easterly along said boundary line to the shore of New York bay; thence along said shore to the line which, before the passage of this act, divided Jersey City from Greenville; thence along said last mentioned line, its several courses, to a point in New York bay where the centre line of the Hudson river produced southerly would intersect the same; thence northerly and along the centre line of the Hudson river to the place of beginning."

Passed March 31, 1871, Laws of N. J., 1871, p. 1094.

EXHIBIT 66.

"A Supplement to an Act Entitled 'An Act to Reorganize the Local Government of Jersey City,' Passed March Thirty-first, One Thousand Eight Hundred and Seventy-one."

"Whereas, at a public election held in the township of Greenville, in the county of Hudson, on the tenth day of December, anno domini one thousand eight hundred and seventy-two, the inhabitants of said township did, by a vote of two hundred and ninety-one in favor of consolidation, to fifty-five against it, expressed their desire to be consolidated with Jersey City; and whereas, it is reasonable and proper that the popular will so expressed should be complied with, therefore,

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Jersey City shall hereafter consist of not only the territory hitherto comprised within its limits, but
143 also the territory now comprised within the limits of the said township of Greenville.

"2. Be it enacted, That all persons resident within the said limits of Jersey City and of Greenville, as hitherto existing, shall hereafter constitute a body politic and corporate, known as 'The Mayor and Aldermen of Jersey City.'"

Approved February 4, 1873, Laws of N. J., 1873, p. 203.

Exhibit 67.

"An Act to Consolidate into One Act and to Declare the Special and Local Laws Affecting Public Interests in the City of New York.

Passed July 1, 1882, Three-fifths Being Present.

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

City and County Boundaries.

"Section 1. The city and county of New York shall contain the islands called Manhattan Island, North Brother's Island, Great Barn or Ward's Island, Little Barn or Randall's Island, Manning's or Blackwell's Island, Nutten or Governor's Island, Bedloe's Island, Bucking or Ellis Island, and the Oyster Islands; and also all the territory which formerly constituted the towns of Morrisania, West Farms and Kingsbridge, in the county of Westchester, being all in the territory which lies westerly of the centre of the Bronx River, and southerly of a line commencing in the centre of the Bronx River, at latitude forty degrees, fifty-three minutes, fifty-nine and twenty-three one hundredths seconds north and longitude seventy-three degrees fifty one minutes, thirty-five and sixty-seven one hundredths seconds west of Greenwich and running
144 on a straight line westerly to a point on the low-water mark of the eastern bank of the Hudson river at latitude forty degrees, fifty-three minutes, fifty-three and twenty-one one-hundredths seconds north, and longitude seventy-three degrees, fifty-four minutes, thirty-eight and sixty-four one hundredths seconds west of Greenwich, and thence westerly in a straight line to the west bounds of the state; together with all the land under water within the following bounds: beginning at Spuyten-Duyvel creek, where the water mark of the northern bank thereof intersects the low water mark on the eastern bank of the Hudson river, and running thence along said creek at low water mark on the northern side thereof to the Harlem river; thence along the low water mark on the eastern bank thereof to the Bronx kills; thence along low water mark on the northern bank thereof to the low water mark on the northwestern shore of Long Island Sound; thence along the low water mark of the northwestern and northern shore of Long Island Sound to the mouth of the Bronx river at Hunt's point; thence along the low water mark as far as the same may extend in the Bronx river, and the mouth thereof to the low water mark of Long Island Sound at the western side of Clauson's Point; thence across Long Island Sound to College Point on Nassau or Long Island to low water mark there; thence southwesterly across Flushing bay to low water mark at Sanford's Point, between Flushing and Bowery bays, including Great Barn or Ward's Island, and Little Barn or Randall's Island; then along Nassau or Long Island shore,

at low water mark, and including Manning's or Blackwell's Island, to the south side of Red Hook, then across the North river so as to include Nutten or Governor's Island, Bedloe's Island, Bucking or Ellis Island, and the Oyster Islands, to the west bounds of the State; and thence northerly along the west bounds of the State to the junction with the above-mentioned prolongation westerly of the northern boundary line of the city and county of New
145 York; from the low water mark on the eastern bank of the Hudson river; thence easterly along said line to the easterly bank of the Hudson River at low water mark; thence southerly along said easterly bank, at low water mark, to the point or place of beginning.

* * * * * * *

First Ward.

The first ward shall begin in the middle of Broadway at a point where it is intersected by the middle of Liberty street, and run from the said point of intersection, through the middle of Liberty street, southeasterly, to the middle of Maiden lane; then down the middle of Maiden lane, and from thence in a straight line running in the same direction across the East river, to low water mark on Nassau or Long Island; and thence along Nassau or Long Island shore, at low water mark, to the south side of Red Hook; and then across Hudson River, so as to include Nutten or Governor's Island Bedloe's Island, Bucking or Ellis Island and the Oyster Islands, and all the waters of this State in the Bay of New York, and to the southward thereof, and which are not comprehended in any other county, to low water mark on the west side of Hudson river, or so far as the bounds of the State extend; then up along the West side of Hudson river, at low water mark, or along the limits of this State, to a place due west from the middle of the west end of Liberty street; then to the middle of Liberty street; then through the middle of Liberty street to the middle of Broadway, at the place of beginning.

* * * * * * *

Third Ward.

SEC. 4. The third ward shall begin on the west side of Hudson river, at the northwesterly corner of the first ward and running thence due east to the middle of Liberty street; then through
146 the middle of Liberty street to the middle of Broadway; then through the middle of Broadway to a point opposite to the middle of Reade street; thence through the middle of Reade street, in a line running in the same direction across Hudson river, to low water mark on the west side thereof, or so far as the bounds of the State extend; then down the west side of Hudson river, at low water mark, or along the limits of this State, to the place of beginning.

* * * * * * *

Fifth Ward.

SEC. 6. The fifth ward shall begin at the northwesterly corner of the third ward, and run thence along the northerly bounds thereof, to the middle of Broadway; then through the middle of Broadway to the middle of Canal street; then through the middle of Canal street to Hudson river; then due west to low water mark, on the west side of Hudson river, or so far as the bounds of the State extend; then down along the west side of Hudson river, at low-water mark, or along the limits of this State to the place of beginning.

* * * * * * *

Eighth Ward.

SEC. 9. The eighth ward shall begin at the northwesterly corner of the fifth ward, and run thence along the northerly bounds of the said ward through Canal street to the middle of Broadway; then through the middle of Broadway to a point opposite to the middle of Houston street; then through the middle of Houston street to a point opposite to the middle of West Houston street; then through the middle of West Houston street to Hudson river; then due west to low-water mark, on the west side of Hudson river, or so far as the limits of this State extend; then down along the west side of Hudson river, at low-water mark, or along the limits of this State, to the place of beginning.

* * * * * * *

147 Ninth Ward.

SEC. 10. The ninth ward shall begin at the northwesterly corner of the eighth ward, and run thence along the northerly bounds of the said ward through the middle of West Houston street to the middle of Hancock street; thence northerly through the middle of Hancock street to the middle of Bleecker street; thence northwesterly through the middle of Bleecker street to the middle of Carmine street; thence northeasterly through the middle of Carmine street to the middle of Sixth avenue; thence northerly through the middle of Sixth avenue to the middle of West Fourteenth street; thence westerly through the middle of West Fourteenth street to Hudson river; then due west to low water mark on the west side of Hudson river; or so far as the limits of this State extend; then down along the west side of Hudson river, at low-water mark, or along the limits of this State, to the place of beginning.

* * * * * * *

Sixteenth Ward.

SEC. 17. The sixteenth ward shall begin at the northwesterly corner of the fifteenth ward, at a point in the middle of Fourteenth street where the middle of Sixth avenue intersects the middle of Fourteenth street, and run thence along the middle of Fourteenth street to Hudson river; thence westerly and along the northerly boundary of the ninth ward to low-water mark on the west side of

the Hudson river, or so far as the limits of this state extend; thence northerly along the west side of Hudson river, at low water mark, or along the limits of this state, to a point opposite the middle of the westerly end of Twenty-sixth street; thence in a direct line across Hudson river through the middle of Twenty-sixth street to the middle of Sixth avenue, and thence southerly along the middle of Sixth avenue to the place of beginning.

* * * * * * *

148 Twentieth Ward.

SEC. 21. The twentieth ward shall begin at a point formed by the intersection of the middle of Twenty-sixth street with the middle of Sixth avenue, and run thence westerly along the middle of Twenty-sixth street to Hudson river; thence westerly along the northerly boundary of the sixteenth ward to low-water mark on the west side of Hudson river, or so far as the limits of the state extend; thence northerly along the west side of Hudson river, at low-water mark, or along the limits of this state, to a point opposite the middle of the westerly end of Fortieth street, thence in a direct line across Hudson River, through the middle of Fortieth street to the middle of Sixth avenue, and thence southerly along the middle of Sixth avenue to the place of beginning.

* * * * * * *

Twenty-second Ward.

SEC. 23. The twenty-second ward shall begin at a point formed by the intersection of the middle of Fortieth street with the middle of Sixth avenue, and run thence westerly along the middle of Fortieth street to Hudson river; thence westerly along the northerly boundary of the twentieth ward to low-water mark on the west side of Hudson river, or so far as the limits of the state extend; thence northerly along the west side of Hudson river, at low-water mark, or along the limits of this state, to a point opposite the middle of the westerly end of Eighty-sixth street; thence in a direct line across Hudson river, through the middle of Eighty-sixth street, to the middle of Sixth avenue; and thence southerly along the middle of Sixth avenue to the place of begin-ing."

N. Y. Consolidation Act, 1891, p. 1.

149 EXHIBIT 68.

"An Act Making Appropriations for the Construction, Repair and Preservation of Certain Public Works on Rivers and Harbors and for Other Purposes.

"SEC. 12. Where it is manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors, he may, and is hereby authorized to cause such lines to be established, beyond which no piers or wharves shall

be extended or deposits made except under such regulations as may be prescribed from time to time by him."

Passed August 11, 1888.

U. S. Statutes at Large, vol. 25, pp. 400, 425.

EXHIBIT 1.

Chapter 69, of the Laws of 1887, of New York.

An Act for the Settlement of Territoritl Disputes in Regard to the Lands Under Water in Raritan Bay.

SECTION 1. The Governor shall appoint three Commissioners, who shall have full power, on the part of the State of New York, to meet the Commissioners appointed, or to be appointed by the State of New Jersey, and with them locate and mark out by proper monuments and buoys the true boundary line between the two States in lands under water in Raritan Bay.

SECTION 2. The said Commissioners, within one year from the passage of this act, shall file with the Secretary of the State of New York a map showing such boundary line.

SECTION 3. The expenses of the said Commissioners, not exceeding one thousand dollars, shall be paid by the treasurer upon the warrant of the Comptroller, after first being approved by the Governor.

This Act shall take effect immediately.

150 EXHIBIT 2.

Chapter 159, of Laws of 1888, of New York.

An Act to Extend the Powers and Jurisdiction of the Commissioners Appointed for the settlement of Territorial Disputes in Regard to the Lands under Water in Raritan Bay.

SECTION 1. The Commissioners heretofore appointed pursuant to the provisions of Chapter Sixty-nine of the Laws of Eighteen Hundred and Eighty-seven entitled "An Act for the settlement of territorial disputes in regard to the lands under water in Raritan Bay," are hereby empowered to meet the Commissioners appointed on the part of the State of New Jersey, and with them, locate and mark out by proper monuments and buoys the true boundary line between New York and New Jersey, in New York Bay, Kill Von Kill and Arthur Kill or Staten Island sounds.

SECTION 2. The said Commissioners within one year from the passage of this Act shall file with the Secretary of State a map showing such boundary line.

SECTION 3. The expenses of said Commissioners shall be paid by the treasurer on warrant of the Comptroller, after first being approved by the Governor.

SECTION 4. The sum of three thousand dollars or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated for carrying out the provisions of this act.

This act shall take effect immediately.

151

EXHIBIT 3.

Chapter 212, of Laws of New York.

An Act to Amend Chapter 159, of Laws of 1889.

SECTION 1. Section one of chapter 159 of the laws of 1889 entitled "An act to extend the powers and jurisdiction of the Commissioners appointed for the settlement of territorial disputes in regard to the lands under water in Raritan Bay," is hereby amended as follows:

1. The Commissioners hereto appointed pursuant of the provisions of chapter sixty-nine of the laws of Eighteen hundred and eighty-seven entitled "An act for the settlement of territorial disputes in regard to the lands under water in Raritan Bay, are hereby empowered to meet the Commissioners appointed on the part of the State of New Jersey, and with them locate and mark out by proper monuments and buoys the true boundary line between New York and New Jersey, in New York bay, Kill von Kall, Arthur Kill or Staten Island Island sounds and the Hudson River.

This act shall take effect immediately.

EXHIBIT 12.

Chapter 6 of Laws of 1832 of New York.

An Act to Incorporate the Mutual Benefit Society of Mechanics in the City of New York.

SECTION 1. There shall be established and located in the city of New York, a charitable society, by the name of the Mutual Benefit Society of Mechanics in the city of New York.

SECTION 2. Abraham Carlock, William Wright, Edward Townley and George W. McPherson and such other persons as shall hereafter become members of said society, are hereby constituted a body corporate, by the name aforesaid.

152 SECTION 3. The said corporation shall have power to prescribe rules and regulations for the admission of members and for expelling them for the non-observance of its by-laws.

SECTION 4. The object of this corporation is, to afford mutual relief to the members thereof, and other families in cases of sickness or death.

SECTION 5. The corporation may purchase and hold real and personal estate, for their use and benefit, but the same shall not exceed at any one time five thousand dollars.

SECTION 6. The corporation shall possess the general powers and be subject to the general restrictions and liabilities prescribed in the third title of the Eighteenth Chapter of the First Part of the Revised Statutes.

SECTION 7. The legislature may at any time hereafter alter, modify or repeal this act.

EXHIBIT 15.

Opinion of Court of Appeals in N. Y. vs. Central R. R. of N. J., 42 *N. Y., Ct. of Ap. R.* 283.

Potter, Justice: Three causes of demurrer are assigned by the defendants.

First. "Want of jurisdiction of the person of the defendant."

Second. "Want of jurisdiction of the subject of the action."

Third. "That the complaint does not state facts sufficient to constitute a cause of action."

In the view I have taken of this case, it is quite difficult to examine these cases separately; they will, therefore, be substantially discussed together.

153 One principal point in the first cause of demurrer, if taken alone, even if good, does not reach the entire merits of the question, which both parties are desirous of having considered. It involves but a question of practice as to the bringing a foreign corporation into Court, and rests so much in the obscurity of doubt, that, for the present, I have passed it by to consider the more important questions raised by the other causes of demurrer assigned—and, first, that of jurisdiction by this Court of the cause of the action.

The objection raised by this point is, not that a Court of Equity has not jurisdiction of an action of the NATURE of that set forth in the complaint, but that it has no jurisdiction of the particular subject therein complained of—that the Court has no power to make or enforce any decree in relation to the *locus in quo*.

Though the case is nominally a case between the State of New York and a foreign corporation, its importance can only be appreciated when it is seen that, practically, a Court of Equity of one State is called upon, and is in effect required to settle the disputed question of the boundary line between two sovereign States—one of them being the State in which, only, such Court of Equity can exercise jurisdiction, the other State not being a party to the action.

This, it is obvious, is calling upon the Court to perform a duty of great delicacy. It is called upon to declare the law, which, if established, is to be the law for each State as against the other.

It is a duty which, upon the first reflection, common propriety would seem to dictate should be performed by a Court having equal jurisdiction over both States, and where both should be made parties, by a Court in which each of the States should have equal confidence, and from whose decision either State could directly appeal

from the judgment to be rendered, and in which both parties
154 could have all the advantage of the local laws of the State in which the action should be pending. This, I think, cannot be done in this cause.

By our code of Practice, Section 122, it is provided, that the Court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights: but when a complete determination of the controversy cannot be had without the presence of other parties, the Court must cause them to be brought in. The demurrer in this case calls for the adjudication of legal and substantial rights and interests between parties, one of whom cannot be brought into this Court as a defendant, though the nominal defendant may be properly here. Before this Court can determine whether it has jurisdiction to act at all, it must actually give construction to an Act of Congress, INVOLVING THE PROVISIONS OF A TREATY BETWEEN THE STATES OF NEW YORK AND NEW JERSEY IN REGARD TO THE BOUNDARY LINE BETWEEN THOSE STATES; AND IN THE ABSENCE OF NEW JERSEY AS A PARTY, THE COURT MUST ADJUDGE AND DETERMINE THE LOCUS IN QUO TO BE WITHIN THE TERRITORY AND JURISDICTION OF THE STATE OF NEW YORK, SO THAT IN EFFECT IT MUST DECIDE AGAINST NEW JERSEY BEFORE IT CAN PROCEED TO GIVE JUDGMENT IN FAVOR OF THE PLAINTIFF.

There seems, therefore, to be a legal impropriety in having one of two contending parties judicially to determine its rights as against the other.

It is a well known maxim or principle given for the interpretation of deeds and treaties "that neither the one or the other of the parties interested has a right to interpret it according to his own fancy." Vattel Max., 3 B., 2 Chap. 17. Nor can the Court cause the State of New Jersey to be brought in as a party in pursuance of the provisions of Sec. 122 of the Code above cited, for the reason
155 that an order so to bring in that State as a party, and the bringing it in accordingly would deprive this court, by virtue of that very order, of jurisdiction to decide the case at all; it having no jurisdiction to hear or decide an action between sovereign States. U. S. Cons. Art. 3, Sec. 2. So it will be seen that the State of New Jersey cannot be allowed the benefit of this provision of our Statute, a right allowed to all other suitors, viz: that of being brought in as a party. And though it may appear to this Court that the *locus in quo* is within the State of New York, still its judgment must be, "by saving the rights of the State of New Jersey." Code, Sec. 122. And should the Court give its decision as the right appears to them, and be in error in this regard, its judgment, if attempted to be carried out, would be ineffective and might bring a conflict between the authorities of the two States.

In such case, resort must still be had to the Federal Courts to settle the question. THE RIGHTS OF THE STATE OF NEW JERSEY CANNOT BE PREJUDICED BY AN ADJUDICATION OF THIS COURT.

This case to be decided is strikingly analogous to that of an action brought by the claimants to the title of lands or real estate against

the tenants or occupiers of such estate, holding the same under another and a conflicting claim of title, for injuries done to the reversion by such tenants without having joined their landlord as a party to the action; and where, upon the face of the complaint it clearly appears that the title of the landlord of such tenants is directly involved and must be decided as a matter of law. The Court, in such case, would order the landlord of the tenants to be brought in as a party.

If the case was reversed, and the defendants had brought their action in this Court, against individuals in this State for any injury or disturbance to their structures, the Attorney-General, as representing the State of New York, would have been a necessary
156 party. Davis *vs.* the *The* Mayor of New York; Duer, 663, S. C. 3 Duer, 121, 157, *et sequiter*, Shaver *vs.* Brainard, 29 Barb., 25. And this is the rule even though the defendants may be non-residents. Sturtevant *vs.* Brewer, 17 How., Pr. R., 571, 4 Paige, R., 75-6-7. 1 Peters R., 149.

I think, therefore, that a complete determination of the controversy cannot be had without the presence of the State of New Jersey as a party. This appears from the provisions of the treaty which we are called to pass upon.

The complaint charges, among other things, that the defendants have been and are erecting structures that interfere with the navigation of the Bay of New York and Hudson River, and ask relief against this act. We may take judicial notice, I think, that the waters of this bay and river at the place complained of, are navigable waters in the maritime sense of that term; if so, this would seem to make it a question affecting commerce, the power to regulate which is conferred upon Congress; and though Congress has passed no act in execution of this power to regulate commerce between the several States, still the action could have been brought in the Federal Courts, and New Jersey, as a body politic, could then have been brought into a Court, where her rights, under this treaty, could have been adjudged. It is true, that there are other matters of injury alleged in the complaint to have been done against the plaintiff, as to which no doubt a Court of Equity can properly take cognizance, such as an encroachment upon jurisdictional rights, and the commission of a nuisance thereon; but these injuries are mingled with charges which appear to me to be more properly within the province of Federal Courts and within their jurisdiction to determine, that the duty of severing such injuries set forth in the same complaint from those that are not so within the jurisdiction of the State Courts; and of affording a proper remedy thereon, is exceedingly em-
157 barrassing, if not practically impossible. The whole character of the injuries complained of is most clearly that the whole question comes peculiarly within the legitimate sphere of that tribunal, which is clothed by the Federal Constitution, (and by the consent of the States whose rights are thus brought in question) with authority fully to hear and determine the controversy and to whose determination each State would yield cheerful obedience.

Even though it may appear that for some of the causes set forth,

a State Court of Equity might entertain jurisdiction, it would have been more eminently proper that an action of this nature should have been brought to the Federal Courts. But suppose we are in error in the views we have above expressed; we are then called upon to give judicial construction to the provisions of the treaty made by the commissioners on the parts respectively of the States of New York and New Jersey, ratified by these States respectively, and by an Act of Congress. If, upon an examination of the several articles and provisions of the treaty the *locus in quo* is found to be in the State of New York or within the jurisdiction given to its Courts, then it is conceded this Court can take cognizance of the complaint, otherwise we have no jurisdiction of the subject of the action, and in the latter view the complaint will have failed to state facts sufficient to constitute a cause of action. From the preamble to the treaty which is contained in the Act of Congress its purpose is therein expressed to be that "of agreeing upon and settling the jurisdiction and territorial limits of the two States." The preamble to the Act of this State is expressed to be "an agreement relative to the boundary line between the two States." (Act of February 5th, 1834.) Its object, therefore, is plain, and clearly expressed.

By the various provisions of the treaty, it is obvious that "BOUNDARY LINE" and "jurisdiction" are terms not intended to be identical in their meaning; and while the line which fixes
158 the boundary between the two States, with an exception, is unquestionable, and is not controverted by the parties, "jurisdiction" a word of more questionable meaning in this treaty, is clearly not limited in its construction to the boundary line; and that it is qualified in its meaning according to its applications to different objects mentioned in the treaty. Except for such qualifications in the meaning, use of and application of the term "jurisdiction," the fixing of the boundary line between the States, would of itself control the meaning and effect of the term "jurisdiction."

The territorial limits of a State, as a natural and legal consequence, would limit its jurisdiction; but jurisdiction for certain purposes is granted to New York, over territory within the State of New Jersey, and jurisdiction to the State of New Jersey, is in like manner and for certain purposes granted over territory belonging to the State of New York.

In other instances both States have a kind of jurisdiction, though for different purposes not in conflict, over the same territory. The boundary line of a State is, and must be, a fixed unchanging line, while jurisdiction for special purposes may be extended and changing.

From this statement it is seen that "jurisdiction" as used in this treaty, is intended to be a qualified term of greater or less power, the extent or limit of which—its several meanings—is supposed to be the real difficulty that arises upon this point of the case.

This will be the more obvious as we proceed to examine the several articles of the treaty in their order, which are as follows:

ARTICLE FIRST. The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hud-

son river, opposite the point on the west shore, thereof, in the forty-first degree north latitude as heretofore ascertained, and marked to the main sea; shall be the middle of the said river—of the bay of New York—of the waters between Staten Island and New
159 Jersey and of Raritan bay, to the main sea; EXCEPT AS HEREINAFTER OTHERWISE PARTICULARLY MENTIONED. Omitting for the present an examination of the words in this article ("except as hereinafter otherwise particularly mentioned,") it must be conceded that by the force of this article the structures complained of are within the territorial limits of the State of New Jersey. They are easterly of this established dividing line between the States. The sovereign and unqualified proprietorship of the *locus in quo,* therefore is *ex vi termini* in New Jersey.

How then do the Courts of the State of New York acquire jurisdiction to adjudicate, and how are its judgments to be enforced within the territory of another sovereign State?

If this article stood alone—if the power and effect which its positive language confers is not destroyed or taken away by other provisions of the treaty, it is clear that the sovereign POWER, including full jurisdiction of the *locus in quo,* is in the State of New Jersey, and that such power and jurisdiction is exclusive and unqualified. I need not cite authority to sustain a proposition so elementary, nor to prove that such jurisdiction extends to lands under water, in the sea, and in navigable rivers. Nor will the primary and fundamental maxims of international jurisprudence be controverted, that within the territorial limits of a State its own authority is supreme and exclusive of every other State, and that such State possesses the exclusive authority to regulate the manner of holding and using property, personal as well as real, within its own territorial limits; and the power must follow to determine and administer the remedies and modes of redress for any use or appropriation of real estate which is not warranted by its own laws, and also to sustain and uphold where its own laws give their sanction.

And this absolute proprietorship includes the right to build, or permit to be built, docks, wharves and piers and indeed, to make, or permit to be made, the very structure complained of, subject
160 to the power of the Federal Government and its Courts to restrain encroachment upon, or unjust interferences with the rights of navigation and commerce.

The plaintiff claims that jurisdiction is conferred over the *locus in quo* to the State of New York, and to her Courts by virtue of the provisions of the third article of this treaty. It may be well, however, to introduce the articles of this treaty in their order.

The second is as follows:

"ARTICLE SECOND. The State of New York shall retain its present jurisdiction of and over Bedloes and Ellis Islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that State."

It may be well as we proceed, and at this point, to explain the meaning of the words at the conclusion of the first article,—"except

as hereinafter otherwise particularly mentioned." These words are explained to my mind by the language of the SECOND article, and by other matters of which we can take judicial notice. Previous to this treaty, the boundary line of the State of New York as laid down in the Revised Statutes of this State, of 1830, Chap. 1, vol. 1, Section 1, pages 62 to 65, made the line as between New York and New Jersey, to run "IN SUCH A MANNER AS TO INCLUDE STATEN ISLAND AND "THE ISLANDS OF MEADOW ON THE WEST SIDE THEREOF, SHOOTERS "ISLAND, LONG ISLAND, THE ISLE OF WIGHT, NOW CALLED GAR-"DINERS ISLAND, FISHERS ISLAND, SHELTER ISLAND, PLUMB ISLAND, "ROBINS ISLAND, RAM ISLAND, THE GULL ISLANDS, AND ALL THE "ISLANDS AND WATERS IN THE BAY OF NEW YORK AND WITHIN THE "BOUNDS ABOVE DESCRIBED."

161 This description included Bedloes and Ellis Islands in New York, and New York had always claimed title to these islands, and had always exercised jurisdiction over them, and had claimed them to be within her territory; and these, together with Governors Island, had been actually ceded by the State of New York, before that time, to the United States, by an Act passed April 15th, 1800, giving the LATTER jurisdiction over them. So that when the treaty line in question was agreed upon, it cast Bedloes and Ellis Islands upon the New Jersey side of this treaty line, and, consequently, it was necessary to have them excepted. In order to save New York the benefits of her former claims thereto, the language of this second article was, doubtless, regarded as appropriate and as a compromise of this question, each party being willing to leave the question of sovereignty and actual proprietorship unexpressed, and leave the jurisdiction of the United States undisturbed. The THEN PRESENT JURISDICTION of New York over them was reserved, granted or conceded by the one party and accepted by the other, and such agreement was well expressed in this second article.

And this explanation may be sufficient to reconcile and give effect to the language of exception at the end of the first article, and may well be held to mean, as its language clearly imports, that the boundary line so fixed shall be the boundary line of sovereign territory of proprietorship and all incident rights, "except as hereinafter otherwise particularly mentioned," to wit, in so far as each party reserves to itself or concedes to the other certain subordinate rights in respect to navigation, to quarantine, to fishing, to docks and wharves, and to criminal police laws. This construction brings in to use the language of that exception contained in the first article for a reasonable and sensible purpose. It can only be otherwise used to confuse and create doubt as to its meaning.

162 The THIRD article of this treaty, by which the plaintiff claims jurisdiction of the subject matter set forth in the complaint, is that which has received the most consideration upon the argument of this case, and is as follows:

"THIRD ARTICLE. The State of New York shall have and enjoy EXCLUSIVE JURISDICTION of and over all the waters of Hudson River, lying west of Manhattan Island, and to the south of the mouth of Spuyten Duyvel Creek, and of and over the lands covered by the

said waters, TO THE LOW WATER MARK ON THE WESTERLY OR NEW JERSEY SIDE THEREOF, SUBJECT TO THE FOLLOWING RIGHTS of property and of jurisdiction of the State of New Jersey, that is to say:

1st. The State of New Jersey shall have the EXCLUSIVE RIGHT TO PROPERTY in and to the land under water lying west of the middle of the Bay of New York, and west of the middle of that part of Hudson River which lies between Manhattan Island and New Jersey.

2d. The State of New Jersey shall have the EXCLUSIVE JURISDICTION of and over the wharves, docks and improvements, made and to be made on the shore of the said State, and of and over all vessels aground on said shore or fastened to any such wharf, or dock, (except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York which now exist, or which may hereafter be passed).

3d. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters; provided that the navigation be not obstructed or hindered."

I am free to confess to some little doubt as to the meaning,
163 and of a construction that will reconcile ALL of the provisions of this article. The boundary line in the language of the first article makes the lands westerly of that line within the absolute sovereign boundary, and as a consequence within the jurisdiction of New Jersey. Does the language of this article take that back, and make a new line to which the absolute and sovereign jurisdiction of New York extends, to wit: to low water mark on the New Jersey side? I think not. Though the terms "EXCLUSIVE JURISDICTION," are used in this article, it is expressly made, SUBJECT to the right of New Jersey to have "THE EXCLUSIVE RIGHT OF PROPERTY" west of the boundary line so drawn by the first article; so that it cannot be made to mean the absolute and sovereign right; it must be a right qualified and limited. If the distinguished and intelligent commissioners had intended to confer on the State of New York absolute sovereignty over this *locus in quo*, as it is to be presumed they understood the power of language, it would have been much more simple, artistic and clear to have drawn the description of the boundary line between the States in language that would have expressed the intent; that it should be at low water mark, on the New Jersey side. This they did not do. But in terms they have given EXCLUSIVE JURISDICTION over and to the water, and land under water to the one State, and THE EXCLUSIVE RIGHT OF PROPERTY to another State, over the same territory. It is the category of predicament in which this case is thus placed, produced by the use of these terms, seemingly in conflict and as to which the parties claim different interpretations that calls for judicial aid.

I understand that the rules in part by which the Court must be governed in the performance of this duty of giving construction to the language of a treaty, or a statute (and this is both) is that in
164 cases where doubt seems to arise from the language of one particular clause or section the whole treaty or statute should be read together, in order to ascertain its object and intent, and for that purpose we are to compare all the parts together and

then, if possible, so to interpret as to prevent contradiction, or inconsistency; and also, if practicable, so as to give effect to every clause, section, and part of it; and so as to reconcile the different provisions with each other as to make the whole consistent and harmonious. The manifest intent of the parties being the chief object; the preamble may be referred to to ascertain this intent.

Following these rules, we see that the act of this State authorizing the appointment of Commissioners on the part of New York, (Laws of 1833, ch. 6,) was to "negotiate and agree respecting the territorial limits and jurisdiction of the State of New York and the State of New Jersey." The Act of the State of New Jersey for the same purpose has the same title. The preamble of the treaty, as we have stated, is "of agreeing upon and settling the jurisdiction and territorial limits of the two States," and the Act of ratification of the treaty by this State is entitled "the Act to confirm the agreement, &c." If but one of the terms "JURISDICTION" or "BOUNDARY LINE" had been used, or if it appeared they were intended to be synonymous and identical, the interpretation might be easy, but as we have shown that they are not, so, we must give to each term its appropriate meaning. There is no difficulty in determining where the political BOUNDARY LINE is between these two States. That line is clearly defined in the first article. On either side of that line these States are respectively the sovereign proprietors and owners, New York on the easterly and New Jersey on the westerly side thereof. But this line does not, by the terms of this treaty settle the JURISDICTION, in all respects, between these States. New York has certain jurisdiction west of the line, and New Jersey has JURISDICTION east of it.

165 To define the meaning of these JURISDICTIONS, and what powers the States respectively possess by virtue of those terms, and what they respectively have parted with, is the main point in this case. By this third article, "New York shall have and enjoy exclusive jurisdiction of and over the waters of the Bay of New York, and of and over all the waters of the Hudson River lying west of this line, and of and over the lands conveyed by said waters to low water mark on the New Jersey side." And by the same article New Jersey shall have the exclusive right of property in and to the lands under water up to the BOUNDARY LINE between the States as fixed by the first article. Here, then, is presented the case of the sovereign State of New Jersey, whose territorial line and proprietorship of the land is fixed and undoubted, yielding to the State of New York exclusive jurisdiction over the waters to a certain line, and to the land under waters to the same line within her own boundary. Under these provisions of the treaty the State of New York brings action, in her own Court of Equity, against a body corporate of the State of New Jersey, for an injury done within the territorial bounds of the State of New Jersey, upon lands, the proprietorship of which, by the treaty, is conceded to New Jersey, a proceeding in *rem*, to abate a nuisance, claiming jurisdiction for her Court of Equity on the ground that it is a nuisance. This presents the whole legal view of the case.

It is conceded that if judgment be given according to the plaintiff's

claim, the executive power which must be called into exercise to abate the nuisance must be exercised by some officer sent from the State of New York, and doubtless from the City and County of New York, in which County the venue of the action is laid. In looking at the boundaries of the County of New York, (Rev. Stat., marg. page 2, page 130, 5 Ed.,) the *locus in quo* does not seem to be within that County. If I am not in error in this statement, (though all
166 the maps I have consulted confirm this view), a judgment in favor of the plaintiff could not be executed by the Sheriff or other local officers of the County of New York, except by adopting the theory of the plaintiff that by the terms of the treaty the *locus in quo* is not only brought within the jurisdiction of the State of New York, and within the jurisdiction of her Courts, but also, that for this purpose it is within the limits of the County of New York; otherwise the territory is not within the legal limits of any one of her counties. By the 123d section of the Code such an action must be tried in the county in which the subject of the action, or some part thereof, is situated, and, though this FACT appearing may not be cause for demurrer, I do not see how the action can be tried within the County of New York, or its judgment be executed if given, unless this construction, as claimed by the plaintiff, be given to it. But suppose I am in error in these suggestions that the territory is not within any one of the counties of the State, we come back to the question of the meaning of "exclusive jurisdiction over the waters and over the lands covered with water," in the State of New Jersey given to New York.

It is clear that this "exclusive jurisdiction" was intended to be something less than that entire and absolute jurisdiction which is incident to State sovereignty, because the sovereign power has not been taken away and the political power of New Jersey still remains over this terrtiory; and because this exclusive jurisdiction is expressly declared to be SUBJECT to the jurisdiction of New Jersey, in her right of proprietorship and ownership of the lands, and to the exclusive jurisdiction of New Jersey over wharves, docks and improvements made and to be made on the SHORE of the said State, and over all vessels aground on said shore and fastened to said wharves or docks, except that said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State
167 of New York, which then existed, or which might thereafter be passed; and it was also made subject to the exclusive right by New Jersey, to regulate the fisheries in said waters, only that New Jersey could not thereby obstruct navigation.

There is nothing, therefore, to prevent giving the construction to these words, "jurisdiction," in the treaty, that is, according to the common, natural, and well-defined meaning of these words. It is the "authority to judge," "the power to act judiciously," and to administer justice" over the subject thus limited and specified in the treaty; and I think this also includes the power to execute the judgment and enforce obedience to the judgment, if the judgment be in a Court having jurisdiction of the SUBJECT of the action, and having power to enforce the remedy demanded. This construction

will put in use and give full meaning to the words exclusive jurisdiction of and over the waters, and of and over the lands under water.

We must also give the same construction, and apply to proper use and give full effect and meaning, if possible to all other words of the same article which gives to New Jersey the exclusive jurisdiction of property in the same lands, and over the wharves, docks and improvements made and to be made on the shore of that State.

One of the distinct claims of the plaintiff is, that the structures complained of are an interference by the defendants with the waters in the Bay of New York and Hudson River; that they have not asked and have not obtained consent of New York so to use and make such structures; that they prevent the spread of the said waters, and interfere with navigation; that the defendants are not parties to the treaty and have no title themselves to the lands under the water, and cannot set up title in New Jersey as a matter of law, in their defence upon demurer; and that New Jersey has no power to give consent to make such structures in said waters. The argument of the
168 defendants is, that by the terms of the treaty in question, the State of New Jersey never ceded away, surrendered up, or parted with the right of herself, or that of her citizens, to construct wharves, piers, docks and other improvements upon her shore, and did not intend thus voluntarily to cut herself and her citizens off from the right to carry on trade and commerce by means of the navigable waters which bound her eastern shores.

The settlement of these conflicting claims of the parties is the determination of this main question in the case.

I cannot doubt, and therefore shall not hesitate to assume, without stopping to discuss the question that before the making of this treaty, New Jersey, as a sovereign State, bounded upon tidal and navigable waters, possessed the common, natural and incident right and authority to construct wharves, docks, piers and other necessary aids to commerce upon her shores; nor do I understand the plaintiffs to take position contrary to this proposition. They rely upon the terms of the treaty only, and claim that the jurisdiction asserted was granted thereby.

A right and privilege so valuable, so material to the commercial interests of a State, as that of her commerce by her navigable waters with other States, and with the world at large, to be yielded up to a rival and adjoining State, and herself to become in fact an inland State, without apparent consideration, or the expression of a real one, demands that the terms by which it is so surrendered should be expressed in strong and unequivocal language. If New Jersey, by this treaty, has deprived herself and her citizens of the right to build wharves, piers and docks upon the line of navigable water, then, in effect, she has abandoned all her substantial interests in commerce upon water, for commerce upon navigable water can only be conducted by means of these structures. The right of the defendant to erect the structures in question may be determined by the in-
169 terpretation which is to be given to this part of the treaty. If the right to erect such works has not been parted with by

New Jersey, then New York has no jurisdiction over the subject of the action.

It is very clear to my mind from the express terms of the treaty that New Jersey did not intend to yield up all her commerce by her navigable waters. She possessed at the time of that treaty, docks, wharves, and improvements to accommodate her business to water commerce, and it would be absurd to suppose, or to assume that wharves, and docks and other such improvements, were not then located at the places where only they could be useful, for the purposes of such commerce; to wit, at the wharf line; or, as I understand it, at the line of navigable water; at the place where ships are laden and unladen.

As to all such wharves, docks and improvements then made the State of New Jersey who then had full jurisdiction within her territorial limits, saw fit to protect herself, not only by retaining them in the express language of the treaty, "together with the exclusive jurisdiction of and over them," but also, of the right THEREAFTER to make such wharves, docks and improvements. This was reversed by the use of the words in the future tense, "AND TO BE MADE."

We are called upon to give effect to these words "to be made" also. They cannot be excluded. How can we give them full force, power and effect, in any other way, than to interpret this provision to be, that the "exclusive jurisdiction" over wharves, docks and improvements made, and to be made," was not intended to be and was NOT parted with, but on the contrary was retained in TERMS by New Jersey. This interpretation is entirely consistent, in perfect harmony and reconcilable with the granting exclusive jurisdiction to New York over the waters and lands under the water, SUBJECT TO THE RIGHTS OF NEW JERSEY AS ABOVE EXPRESSED.

170 With this interpretation, there is no conflict, no inconsistency, and full effect is given to important words. This construction also, is an answer to the argument that as "exclusive jurisdiction" is given to New York over those waters, even to low water mark on New Jersey shore, and that the structures complained of amount to a displacement of those waters; that it is, therefore, an interference with navigations, which is claimed to be one of the violations of her rights.

The right of New York, it is true is exclusive, but is subject to the exclusive reserved rights of New Jersey, as expressed in the treaty. That is, the exclusive rights of New York to the water and land are exclusive of everything, but the exclusive and specified rights of New Jersey to which the treaty declares they are subject. Such jurisdictions as are conferred by the treaty upon New York, are called in some of the books, "a police jurisdiction," and such it is clearly made by the Seventh Article of the treaty. It authorizes criminal process issued against persons accused of offences committed within the State of New York, and on vessels within its jurisdiction to be served on parties being upon such waters. This power would have been unnecessary to be thus expressed, if those waters were within the political or physical boundaries of the State of New York, or within the County of New York, or within the "exclusive jurisdiction" of New

York, other than for the limited and unqualified purposes expressed in the treaty. This is the more clear, from another expression found in the said Seventh Article, which refers to the place in which such arrest may be made, as "waters within the exclusive jurisdiction" of the State of New Jersey, (except only when a vessel shall be fastened to the shore of New Jersey).

This last expression "exclusive jurisdiction" in Article 7, I think, means, POLITICAL OR SOVEREIGN JURISDICTION, as distinguished from "judicial jurisdiction."

171 It is otherwise an inconsistent and useless expression. If it be claimed that the demurrer admits as a fact the allegation in the complaint, that the structures complained of are within the limits whereof exclusive jurisdiction is given to New York, it is sufficient to say, that so far as this may be a fact depends upon how the LAW shall first be found, to wit, whether by a proper interpretation of the treaty the *locus in quo* is within that jurisdiction. The complaint fully describes the place and claims the jurisdiction by virtue of the treaty and statute. The location of the place is a FACT; the jurisdiction is a question of law.

If the claim of the plaintiff be valid and sound, that neither the State of New Jersey or her citizens can build structures in said waters below the point of low water mark on the New Jersey side, it may be replied that there is no allegation in the complaint that the structures are IN FACT below that point; nor can the Court assume to the contrary from the alleged distance to which such structures are extended into the said waters; nor even does the extraordinary area or quantity of surface which it is charged the defendants have so filled up, and the still greater quantity which they intend or threaten to fill up and make solid ground (startling as it does appear to the interests of navigation), establish the fact that they have extended their improvements beyond, or intend to extend them beyond low water mark. Nor yet does it appear to the Court from the alleged displacement and prevention of the spread of waters which has resulted or will result from the making of said structures, that there is any other or greater displacement than is authorized by the reserved rights of the State of New Jersey by the terms of the treaty.

It is, however, alleged in substance that the area so filled up by the defendants, but for such filling up and the obstructions caused thereby, would be navigable waters for vessels of the burden

172 of three hundred tons and under. This, I think, is a FACT, and is to be regarded as admitted; but the difficulty I have found from the assumption of the fact is that I cannot judiciously determine from any alleged capacity or depth of water, that such depth or capacity makes a line below or above low water mark, nor that it excludes the right to build wharves, piers, docks or other improvements upon the lands so covered with water for the use of commerce upon navigable waters; nor can the Court judicially declare that vessels of the capacity specified may not, in high tides, be floated or navigated on the surface between high and low water mark; so that in the absence of an allegation in the complaint that the structures in question are projected beyond the necessary

point for the construction of wharves suitable for water commerce, or that there is an unreasonable or unnecessary displacement of navigable waters, I cannot hold the allegation to be sufficient. The right reserved, or granted, to build wharves necessarily carries with it and by necessary implication reserves the right also to displace waters to the proper wharf-line as equally by trestle work as by solid ground. A wharf-line to be of value must extend so far as is necessary to make a depth of water practicable for the use of commerce. If New Jersey has a right to make wharves at all, she has a right to the extent above mentioned, unless that be beyond the wharf line, which is not alleged. And although New Jersey is not the defendant in this action, the right of the plaintiff to invoke the aid of the Court to redress an injury can only be maintained by showing a title to complain and a right to demand its aid; and the defendants have a right in their defence to insist that the right and title claimed by the plaintiff is not in them, but is in another.

Conceding the right of New Jersey to her wharves, made at the time of the treaty and the right to make wharves thereafter, it is argued that these rights are still limited TO THE SHORE OF
173 NEW JERSEY, and that the distance alleged of one mile out into the bay cannot by any construction be deemed or held to be the SHORE intended by the terms of the compact. The intent and meaning of this expression must, of course, be settled by construction. "Shore," in the literary lexicons, is defined to be, "the coast or land adjacent to the ocean or sea, or to a large lake or river." "Sea shore,'" according to legal and maritime definitions is "that portion of ground between ordinary high and low water mark." The language in this treaty which reserves to New Jersey that to which she had a natural right is "the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made ON THE SHORE OF THE SAID STATE, and over all vessels aground ON SAID SHORE, or fastened to any such wharf or dock." How are these consecutive expressions to be interpreted according to the sense in which the parties concerned must naturally have understood them when this compact was executed and ratified between them? We could not charge the distinguished Commissioners with a want of understanding, or of an intent so absurd as that the wharves, docks and improvements were to be constructed according to the literary definition of a shore, that is, upon the land adjacent to the ocean; and it would hardly be less absurd to suppose that they were to be built upon land, technically known in legal and maritime phrase as "sea shore," that is, land between high and low tides—and sometimes covered with water and sometimes not. Neither of the above terms, however, ALONE, were used. The language employed is "wharves, docks and improvements made or to be made, UPON THE SHORES OF THE SAID STATE." This expression is explained, as to its locality, by the language which immediately follows it,—"and of and over all vessels aground on said shore." This includes a place which at times certainly must be navigable. It contemplated
174 not only that vessels may get "AGROUND ON SAID SHORE," but it also includes a place where WHARVES AND DOCKS MAY

BE BUILT AND TO WHICH SUCH VESSELS MAY BE FASTENED. This explanation of the meaning of the "SHORE OF THE STATE" is conclusive in my mind. It cannot mean land adjacent to the sea, nor technically "SEA SHORE," and I shall, therefore, hold this language to mean that the State of New Jersey retained, and now possesses, the jurisdiction and right to build wharves and docks and improvements "upon the shores of the State," and that such shore extends to the wharf line in the waters on the easterly line of said State. Unless this be the construction, it must be held that New York has also cut herself off from the right to build wharves, docks and improvements on the shore of Staten Island, under the provisions of Article Five of the same treaty.

I have not stated all the reasons which have been considered, and which have brought my mind to the conclusion above expressed in regard to the proper interpretation of this treaty. I have already extended the review beyond what is usual in a Special Term opinion,—but I will very briefly state a few other reasons. In looking at the jurisdiction and rights naturally belonging and incident to these States severally and respectively as States bounded upon navigable waters lying between them; looking at the rights that the parties respectively claimed and enjoyed previous to this treaty—and to the then threatened difficulties between these States in regard to the boundary line, of which we may take judicial notice; looking at the importance of the existence of pacific relations for their mutual and reciprocal benefits; looking at the necessity of avoiding conflicts arising from doubts as to the actual boundary line upon water surface and of regulating the questions of jurisdiction between them so that each could enforce their laws in regard to police, to health, quarantine, fisheries, and navigation, which are expressed in the treaty; and looking at the object of the treaty, as expressed in the several preambles we have referred to, and as expressly limited to the settlement of boundary lines and jurisdiction, and which is entirely consistent with the objects mentioned in the body of the treaty and in the preambles; and in the absence of language in the preambles, or in the treaty from which it would appear that the parties intended anything like CEDING or the SURRENDERING up of territory, or of the natural and important rights and benefits of either of them to their water commerce with other States and with the world. I have not been able to discover the intent on the part of either State to grant, to cede away, or to surrender to the other any such rights or benefits.

If I am right in the interpretation I have given to the three first articles of this treaty and if I am right that the erections and structures complained of are within the jurisdiction which New Jersey before possessed, and which in the treaty she has reserved to herself, it must follow, as the necessary result, that even though it is admitted by the demurrer that the material with which the solid ground structures are formed "consists of dirt, filth and debris of Jersey City, and other parts of New Jersey and New York, and also that the exhalations and stench arising from deposits so made are blown and carried by the prevailing westerly and northwesterly

winds over populated territories of the plaintiff, and that they produce disagreeable odors, and that they affect injuriously the sanitary condition of the inhabitants thereof, and of persons navigating the waters of the Bay of New York and Hudson River, it is, notwithstanding all this, a nuisance over which this Court possesses no jurisdiction, and has no power to make its decree or judgment to abate it, and none to enforce such a judgment upon the subject of this action, if made.

176 I have not thought it necessary to discuss the defendants' objection that the plaintiffs are estopped by long acquiescence from raising the question of the right of the defendants to make the structures in question. I do not think a party ever acquires the right to create a nuisance or to commit a wrong. This point, however, does not arise under the view I have taken. Nor have I weighed the argument of the defendants as to the contemporaneous construction of the treaty by the State of New Jersey, and her citizens in making such improvements, and the implied assent of the plaintiffs, by their silence in relation to such structures, hitherto. I am not at all certain that these matters are such, if true, as that we can take judicial notice of them, and if the facts stated be patent to the defendants, or even to the plaintiffs, the Court has no knowledge, IN FACT, of their verity.

The question involved is a grave and important one. Assuming the whole truth of the complaint, it is to be regretted that an injury to navigation, if it be one, and the dangers that threaten the sanitary condition of a populous city, if this be true, should not be restrained and abated.

I was deeply impressed on the argument, and in the subsequent consideration of the case, with the magnitude and importance of the principles at stake, and with the questions of great public and private interest which are involved. It affects, directly and indirectly, the rights of the public and individuals; it affects the great interests of commerce, of navigation, and of the public health; but I have been brought to the conclusion for the reasons above given, that the demurrer is well taken, and that there must be judgment for the defendants.

P. POTTER.

177 New Jersey Supreme Court.

CENTRAL RAILROAD OF NEW JERSEY
vs.
MAYOR AND ALDERMEN OF JERSEY CITY.

1. The agreement of 1833 between the Commissioners representing the States of New Jersey and New York, having been confirmed by the Legislatures of those States, respectively, and approved by the Congress of the United States, established the boundary line between this State and the State of New York in the middle of the Hudson River and of the Bay of New York.

2. The sovereignty of the State of New Jersey is co-extensive with

the territorial limits thus established, subject only to such exceptions and to such extra-territorial jurisdiction as was, by the said agreement, conceded to the State of New York.

3. The word "jurisdiction" is not used in Article III. of this agreement in the sense of sovereignity.

4. The power to tax the lands under the tide-water of New York Bay within the territorial limits established by the agreement of 1833 is in the State of New Jersey.

178 *Certiorari.*

The following statute contains the text of the agreement or treaty (so called) of 1833 between the States of New Jersey and New York:

"An Act to Ratify and Confirm an Agreement Made Between the Commissioners Appointed by the Governor of the State of New York and the Commissioners Appointed by the Governor of the State of New Jersey, Respecting the Territorial Limits and Jurisdiction Between the said States.

Passed February 26, 1834.

Whereas, Commissioners duly appointed on the part of the State of New York and Commissioners duly appointed on the part of New Jersey, for the purpose of agreeing upon, and settling the jurisdiction and territorial limits of the two States have executed certain articles, two copies for each State, which are contained in the following words:

"Agreement made and entered into, by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, Commissioners duly appointed on the part and behalf of the State of New York, in pursuance of an act of the Legislature of the said State, entitled 'An Act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey,' passed January eighteen, eighteen hundred and thirty-three, of the one part, and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, Commissioners duly appointed on the part and behalf of the State of New Jersey, in pursuance of an act of the Legislature of said State, entitled 'An Act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York,' passed February sixth, eighteen hundred and thirty-three, of the other part.

179 3. Art. I. The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the water between Staten Island and New Jersey, and of Raritan Bay, to the main sea, except as hereinafter otherwise particularly mentioned.

4. Art. II. The State of New York shall retain its present juris-

diction of and over Bedlow's and Ellis' Islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that State.

5. Art III. The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the Bay of New York, and of and over all the waters of the Hudson River lying west of Manhattan Island, and to the south of the mouth of Spuyten Duyvel creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the State of New Jersey, that is to say:

(1.) The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the Bay of New York and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

2. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said State, and of and over all ves-
180 sels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York, which now exist or which may hereafter be passed.

3. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters; providing that the navigation be not obstructed or hindered.

6. Art. IV. The State of New York shall have exclusive jurisdiction of and over the waters of the Kill von Kull, between Staten Island and New Jersey, to the westermost end of Shooter's Island, in respect to such quarantine laws and laws relating to passengers as now exist, or may hereafter be passed under the authority of that State, and for executing the same; and the said State shall also have exclusive jurisdiction, for the like purposes, of and over the waters of the Sound from the westermost end of Shooter's Island to Woodbridge Creek, as to all vessels bound to any port in the said State of New York.

7. Art. V. The State of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the Sound between Staten Island and New Jersey, lying south of Woodbridge Creek, and of and over all the waters of Raritan Bay, lying westward of a line drawn from the lighthouse at Prince's Bay to the mouth of Matavan Creek, subject to the following rights of property and jurisdiction of the State of New York, that is to say:

(1.) The State of New York shall have the exclusive right of property in and to the land under water lying between the middle of said waters and Staten Island.

181 (2.) The State of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New Jersey which now exist or which may hereafter be passed.

(3.) The State of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters; provided, that the navigation of the said waters be not obstructed or hindered.

(8.) Art. VI. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed within that State, or on board of any vessel being under the exclusive jurisdiction of that State, as aforesaid, or committed against the regulations made or to be made by that State, in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New York, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New York or fastened to a wharf adjoining thereto; or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New York.

9. Art. VII. Criminal process issued under the authority of the State of New York against any person accused of an offense
182 committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid, or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the State of New York against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

10. Art. VIII. This agreement shall become binding on the two States when confirmed by the Legislatures thereof respectively, and when approved by the Congress of the United States.

Done in four parts (two of which are r-tained by the Commissioners of New York, to be delivered to the Governor of that State, and the other two of which are retained by the Commissioners of New Jersey, to be delivered to the Governor of that State), at the City of New York, this sixteenth day of September, in the year of our Lord, one thousand eight hundred and thirty-three, and of the independence of the United States, the fifty-eighth.

THEODORE FRELINGHUYSEN.
JAMES PARKER.
LUCIUS Q. C. ELMER.
B. F. BUTLER.
PETER AUGUSTUS JAY.
HENRY SEYMOUR.

183 Therefore: That the aforesaid agreement, and every article, clause, matter and thing therein contain, shall be and the same is hereby fully and amply ratified and confirmed on the part of the State of New Jersey.

Confirmed by New York, February 5, 1834.

Approved by the Congress of the United States June 28, 1834.

Rev. of N. J. 1877, p. 1178."

Argued at the June Term, 1903, before J. J. Garrison, Garrison & Swayze.

For the Prosecutor, John L. Conover, Frank Bergen, William D. Edward, George Holmes.

For the Defendants, Robert Carey, George L. Record.

The opinion of the Court was delivered by GARRISON, *J.*:

This writ brings up for review the taxes levied by Jersey City for the year 1899 upon certain lands of the prosecutor lying between the middle of New York Bay and its low water line on the New Jersey shore. A single reason for annulling this tax is now pressed by the prosecutor, which is thus stated in the brief of counsel:

"The prosecutor insists that the land under water included in "these lots and separately assessed for taxation is not subject to "taxation by the taxing officers of Jersey City for the reason that it "is not within the jurisdiction of New Jersey although within the "geographical boundaries of the State."

184 "There may be some question as to the technical boun- "daries of Jersey City under the various acts of the Legisla- "ture creating the city and its constitutent parts, but the prosecutor "raises no such question at this time."

"The question in this case depends upon the interpretation of "Art. III. of the compact or agreement made by the States of New "York and New Jersey on September 16, 1833, and confirmed by "the Legislatures of both States and approved by Congress in 1834."

The compact thus referred to came into existence in this way: The grant by Charles II. to James, Duke of York, made in 1664, included the colonies of New York and New Jersey. James, being thus vested with both governmental and proprietary rights on each side of the waters that separated the two colonies, granted to Berkeley and Carteret New Jersey, describing it as "all that tract of land "adjacent to New England and lying and being to the west of Long "Island and Manhitas Island, and bounded on the east by the main "sea and part of Hudson's River and hath upon the west the Dela- "ware Bay and to the northward as far as the northermost branch "of said bay or the river of Delaware, which is forty one degrees "and forty minutes of latitude, and crosses over thence in a straight "line to Hudson's River in forty-one degrees of latitude."

The point in this description to be noted is that New Jersey was bounded on the east by navigable water. Later, in 1674, after the Dutch Restoration, these grants were renewed under the same description. In 1676 the *quinti-partite* deed was made by the grantees

of James and their co-tenants to Sir George Carteret for the easterly part of the premises granted by James to Berkeley and
185 Carteret, and in this instrument the land is described as "extending eastward and northward along the seacoast and "the river called Hudson's River." In 1682 the widow of Carteret and others granted and released their interest to William Penn and eleven others, in which conveyance the land was described as in the *quinti-partite* deed; and in the year following the Duke of York released to twenty-four proprietors any interest he might have in the territory, which was described as "bounded east by Hudson River." Later came the successful war of the Revolution, from which the colonies of New York and New Jersey emerged as free and sovereign states. From the facts thus epitomized there arose a controversy between the two States based not upon any radical difference of opinion as to the effect of the grants that had been made during the colonial period, but rather upon divergent views as to the effect upon State sovereignty of the Revolution itself.

The view advanced on behalf of New Jersey took, in 1806, the form of a statute passed in that year which, after reciting the historical facts above stated, declared, as their result, that "the State "of New Jersey became invested with full right and lawful au- "thority to exercise jurisdiction in and over the Hudson River and "the main sea and all the ports, harbors and havens lying adjacent "to and along the Jersey shore and coast in such manner as be- "longs to a sovereign and independent State to use and exercise." (Bloomfield's Laws, 74.) Under this statute Commissioners were appointed to meet with commissioners to be appointed by New York to make an agreement to settle and determine the eastern boundary line of the State of New Jersey. Such a commission was appointed by New York, and met with the New Jersey commissioners at Newark in 1807, but no agreement was reached. Other conferences were held with like effect, and sundry statutes were passed with
186 a view of provoking an issue that might lead to a settlement of the questions involved. In 1829, no agreement having been reached, New Jersey filed a bill against New York in the Supreme Court of the United States, a summary of which may be found in 108 U. S., pp. 406-410. No appearance to this suit was ever entered by the State of New York, although efforts were made to compel such action upon her part (3 Peters, p. 461; 5 Peters, 283; 6 Peters, 323.) This bill was dismissed on February 15th, 1836, three years after the confirmation by each State of the so-called treaty of 1833.

From this summary may be gathered the general nature of the controversy between the two States as it stood in 1833, and of the nature and grounds of the claims advanced on behalf of each. What is chiefly to be noted is that each State bottomed its right upon the essential claim of sovereignty which, on behalf of New York, was deduced from the one-time union of sovereignty and property in the Duke of York, and, on behalf of New Jersey, from the successful revolution against the King.

On the 6th day of February, 1833, "An act for the settlement of

the territorial limits and jurisdiction between the State of New Jersey and New York" was passed by the Legislature of this State (Pamphlet laws of 1833, p. 54). The language of this statute has so important a bearing upon the compact that grew out of it that its full text is given:

"An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York.

"Whereas, the Legislature of the State of New York have recently "passed a law authorizing the Governor of that State to appoint "commissioners to meet commissioners on the part of this
187 "State, to negotiate and agree respecting the territorial limits "and jurisdiction of the State of New Jersey and the State "of New York.

"And Whereas, it is expedient and desirable that the difference "heretofore existing on this subject should be amicably and speedily "adjusted; therefore,

"SEC. 1. Be it enacted, by the Council and General Assembly of "this State, and it is hereby enacted by the authority of the same, "that the Governor of this State or the person administering the "government of the same, be, and he is hereby authorized to ap- "point three commissioners, with full power on the part of New "Jersey, to meet commissioners, appointed or to be appointed under "or by virtue of a law of New York, passed January the eighteenth, "eighteen hundred and thirty-three, and with them to negotiate "and agree respecting the territorial limits and jurisdiction between "the said States as to them may seem just; and if by death, resigna- "tion, or otherwise, a vacancy do happen among those appointed by "the State of New Jersey, the Governor, or person administering "the government of this State, is hereby authorized to supply the "same.

"SEC. 2. And be it enacted, That the said Commissioners on the "part of the State of New Jersey, or a major part of them, shall "have full power and authority to agree upon, settle, and determine "the limits of territory and jurisdiction between the said States, "as to them may seem just; and their agreement in the premises, "in writing, signed and sealed by the said Commissioners of both "States, or a majority of them, respectively, if made on or before "the first Tuesday of January next, shall become binding on this "State, when confirmed by the respective Legislatures of New Jer- "sey and New York and approved by Congress.

188 "SEC. 3. And be it enacted, That the said Commissioners "shall meet at such time and place as they may agree upon, "and shall each be entitled to receive five dollars per day, for every "day they may be employed in discharging their duties under this "act, and fifteen cents per mile for every mile they shall necessarily "travel in going to, and returning from, any meeting of the said "Commissioners, to be paid by the Treasurer, on the warrant of the "Governor or the person administering the government of this "State.

"SEC. 4. And be it enacted, That the Governor or person admin-

"istering the government of this State, shall transmit to the Gov-
"ernor of New York a copy of this act."

Passed February 6, 1833." (Laws of N. J., 1833, p. 54.)

A statute of like import and in almost identical language was passed at about the same time by the Assembly of New York.

The Commissioners appointed on behalf of New Jersey, Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, met with those appointed on behalf of New York, and in September of that same year came to an agreement that was reduced by the Commissioners to the form of written articles that were to be binding upon the two States when confirmed by the Legislatures thereof, respectively, and approved by the Congress of the United States. Such confirmation and such approval followed in due course. (Laws of N. Y., 1834, p. 8; Laws of N. J., 1834, p. 118; U. S. Statutes at Large, vol. 4, p. 808.)

The articles constituting this compact are printed in full
189 in a prefatory statement to this opinion, and the interpretation of their language, in so far as it bears upon the right of New Jersey to exercise the sovereign power of taxation over the lands of the prosecutor, is the sole question now presented for decision.

The question is one of first impression, being entirely distinct from the right to exercise civil or criminal jurisdiction, which has hitherto been the only aspect in which the compact has been presented for judicial consideration. With respect to the right last mentioned, namely, that of administering jurisprudence over the territory declared by the compact of 1833 to be within the boundaries of the State of New Jersey, it was held by this Court in the case of the State, *vs.* Babcock that an indictment for a nuisance by placing wrecks in the Hudson River below low water mark on the New Jersey shore would not lie in this State upon the ground that by the compact in question exclusive jurisdiction over offenses in or upon the said waters or the land under them resided in the State of New York (1 Vroom, p. 29). Later the Court of Appeals of the State of New York, in the case of The People *vs.* The Central R. R. of New Jersey, 42 N. Y., p. 283,) held that the courts of New York had no jurisdiction to abate by injunction nuisances extending out into the bay or river from the New Jersey shore upon the ground that by the compact in question the jurisdiction conferred upon New York over the waters of the bay and river was a qualified and limited jurisdiction for police and sanitary purposes, or to protect the interests of commerce, and was not designed to give to New York any right to interfere with the complete political or governmental jurisdiction of New Jersey as a sovereign State over her own soil and its appurtenances, and of and over every description of property within her territorial limits, which ruling was followed by the same court in 1891 in the case of Ferguson *vs.* Ross, 126 N. Y., p. 459.

190 In the case in 42 N. Y. two of the seven judges who constituted the court dissented upon the main proposition upon which the case was decided. This dissent was voiced by Earl, C. J., and is summed up in the proposition elaborated in his dissenting opinion that the word "jurisdiction" in Article III. of the compact

of 1833 was used as synonomous with sovereignty and not as a term of jurisprudence. The five judges who made up the majority of the court not only decided that the word "jurisdiction" was used as a term of jurisprudence, but held further that it was designated to confer only a qualified and limited judicial authority of the sort that is above described in language taken from the prevailing opinion. It is not, now, necessary or proper to decide whether the term was employed by the Commissioners in a broad juridical sense or with the qualified meaning placed upon it by the majority opinion of the New York court. All that is to the present purpose is that its equivalency to sovereignty or governmental jurisdiction was distinctly disavowed, and that the position there taken by the two dissenting judges is the position that must be now successfully maintained by the plaintiff in certiorari. The present case, in fact, turns upon the precise point developed by the divergent views expressed in the New York case, namely, whether the word "jurisdiction" was used in Article III. of the Compact of 1833 as equivalent to State sovereignty or in a less inclusive sense. The reasons pro and con elaborated in the opinions to which reference has been made need not be here repeated. There is, however, one view of the matter not touched upon in either of these opinions that greatly strengthens, in my judgment, the position taken in the majority opinion.

The brief historical review of the controversy between the two States has made it apparent that the question of issue between them was in its ultimate essence one of sovereignty, and that the
191 settlement of this question was the one pressing matter, although other questions were to be settled as well. That this was recognized by each State in providing a modus of settlement is evident from the language of the statutes by which the respective Commissioners were appointed and empowered. Upon this point the titles of these acts are suggestive, that of New York being "An Act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey," while that of New Jersey was "An Act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York;" and in the enactments themselves the same duality of objects to be settled is at all times observed in the statutes of each State. In plain terms, therefore, the Commissioners were empowered to negotiate respecting two things, and thereby to settle two things, namely, limits of territory and jurisdiction. Nowhere is there any intimation that those two were deemed to be one and the same thing. Bearing this fact in mind, and that the main point in controversy was that of sovereignty, the compact itself may be read with a reasonable expectation that the main point submitted to the Commissioners was not lost sight of, and also that both of the powers reposed in them were duly executed. This expectation is fully justified by the terms of the compact. Article I., in clear and explicit language, fixed the boundary line between the States as the middle of Hudson River and of the Bay of New York. This disposed of the question of territorial limits; and had this been the only matter submitted to the Commissioners, would have exhausted

their authority in the premises. They were, however, empowered to deal also with jurisdiction. Hence the qualification with which Article I. concluded, "except as hereinafter otherwise particularly mentioned." To fulfill the conditions of this clause the matters
to be particularly mentioned must be "otherwise"—that is,
192 must alter or modify what has gone before, and secondly,
must be capable of exceptions, that is, of substraction from it, hence must be less than what had preceded. Articles II. and III. fulfill with precision each of these conditions; and from their position and context admit of no other rational interpretation than that they are the excepted matters to be particularly mentioned by which the otherwise unqualified concession of territorial limit was to be modified and abridged. This was effected in Article II. by providing that New York should retain its jurisdiction over certain islands lying in the waters mentioned in Article I., while Article III. continued the subtracting process by stipulating that New York should enjoy exclusive jurisdiction over all the waters included within the territorial limits of New Jersey up to low water mark in the New Jersey shore, subject to certain property rights and jurisdictions which are exception in favor of New Jersey, which thus constituted an exception to an exception. The remaining articles are not directly pertinent.

It will have been noted that sovereignty, *eo nomine*, is not mentioned in these articles, and yet no one contends that it was not disposed of by them. There are, in fine, two declarations contained in these articles, either of which may carry sovereignty, namely, territorial boundary and jurisdiction,—the first by imperative implication, the other by signifying governmental jurisdiction, in which case it is a synonym for sovereignty.

The relation between the territorial limits of a State and its sovereignty is thus spoken of by Judge Cooley in the opening section of his work on Constitutional Limitations: "The sovereignty of a "State commonly extends to all the subjects of government within
"the territorial limits occupied by the associated people
193 "who compose it; and, except upon the high seas, which
"belong equally to all men, like the air, and no part of "which can rightfully be appropriated by any nation, the dividing "line betwen sovereignties is usually a territorial line. In Ameri- "can constitutional law, however, there is a division of the powers "of sovereignty between the national and State governments by "subjects; the former being possessed of supreme, absolute, and "uncontrollable power over certain subjects throughout all the States "and territories, while the States have the like complete power, "within their respective territorial limits, over other subjects." (Cooley, on Constitutional Limitations, p. 2.)

It is further a matter of common knowledge that in the creation of the new States it is by the exact fixation of their territorial limits and not by the precise enumeration of their governmental powers that sovereignty arises and is exercised. Jurisdiction, as has been said, may mean governmental jurisdiction as distinguished from juridical, in which case it is the exact equivalent of sovereignty.

Either term, therefore, State boundary or State judisdiction, may connote sovereignty; and under the one or the other of these heads the matter of sovereignty was unquestionably disposed of in the articles under consideration. Whatever divergency of view exists as to the force and effect of the compact in this respect must be ascribed to the elasticity of the term "jurisdiction." Regarded, however, as a synonym for sovereignty, which must be the contention here, the force of the word is greatly impaired in the present instance by the adjective "exclusive," as so flagrant a redundancy as "exclusive sovereignty" should not lightly be imputed to the framers of these articles.

The grounds for thinking that sovereignty is disposed of under the head of "Territorial Limits" rather than under that of
194 "Jurisdiction," are several and various. In the first place, the legislative direction to each set of commissioners was to deal with both territorial limits and jurisdiction, which was the merest tautology if the jurisdiction referred to was in itself sovereignty. In the next place, the Commissioners did, in several instances, deal with jurisdiction in its juridical sense, a matter to which they were in no wise empowered if the term "jurisdiction," used in the statutes under which they were appointed was governmental. Furthermore, the facts that sovereignty was the main point at issue—that territorial limits preceded jurisdiction in the enumeration of the Commissioners' authority, and that the first article dealt conclusively with the question of territorial limits, are all indications that in dealing with this power the Commissioners were settling the main point at issue. More conclusive still is the circumstance that having in Article I. settled the matter of territorial limits, the jurisdiction with which the Commissioners dealt was excepted from it, which is perfectly rational if the jurisdiction was juridical, and hence a mere incident of sovereignty; but was palpably irrational, not to say inconceivable, if jurisdiction was of itself that very sovereignty.

The significance of the title to the act confirming the agreement is to be noted, which as well as the recitals, mentions jurisdiction as a distinct subject covered by the agreement, see prefratory notes.

A further ground is the conclusive decision of the Court of Appeals of New York, adverse as it is to the claim now advanced on behalf of the sovereignty of that State, pronounced first in the case of People *vs.* Central Railroad Company of New Jersey, already cited, in which the present prosecutor was the successful defendant, and later affirmed by the same Court in the case of Ferguson *vs.* Ross, 126 N. Y., p. 459. In the earlier case Justice Smith,
195 announcing the reasoning of the Court, said: "Whatever "doubt may have existed before upon the subject, immedi- "ately upon the adoption and ratification of this convention or treaty "the sovereignty and jurisdiction of the respective States extended "and attached to that portion of the said river and other waters "assigned to each State, respectively, by said article, up to the line "of the boundary therein fixed and established;" and in the latter opinion Judge Andrews, who spoke for a unanimous court, said:

"The purpose of vesting exclusive jurisdiction over these waters "in the State of New York, was to promote the interests of com- "merce and navigation, which would, as supposed, be best subserved "by giving to this State the exclusive control and regulation of the "waters of the bay and harbor of New York." Indubitably, therefore, the State of New York, through its highest judicial tribunal, has expressly disowned any interpretation of the compact in question by which the sovereignty of New Jersey over the territorial limits granted by the Compact of 1833, is to be in any wise impugned.

Lastly, due weight must be given to the statement of Judge Elmer, himself one of the Commissioners, that what was conceded to the State of New York was "the exclusive jurisdiction over offenses "in and upon the waters or the land covered by the waters, outside "of low water mark." (State *vs.* Babcock, 1 Vroom, p. 29.) Indeed, it is not difficult to read between the lines of this extra-judicial statement that if the Commissioners had not been empowered to deal with jurisdiction as distinct from sovereignty, and as a compensating factor for the concession New York was expected to make respecting territorial limits, it was in the highest degree improbable that any agreement whatsoever could have been reached. This suggestion, which is more than hinted at by Judge Elmer, explains much that is otherwise obscure, indicating among other things, that the jurisdiction, touching which the Commissioners
196 negotiated, was neither sovereignty itself nor even such jurisdiction, alone as is incident to sovereignty; but that it was, in great part, extra-territorial jurisdiction, which was to be, and was in fact, conceded in return for reciprocal concessions. This obiter declaration of Judge Elmer, while not cited as authority for any position taken, is an added reason for holding that jurisdiction, as that term was employed by the Commissioners, was not the equivalent of sovereignty, which is the precise point upon which the present litigation turns.

Opposed to these considerations stands the fact already alluded to that jurisdiction, in a proper context, may imply sovereignty. Enough has been said, I think, to indicate that that circumstance, as applied to the present juncture, is entirely insufficient to withstand the array of reasoning and authority to the contrary, and that the jurisdiction that was conceded to New York over the land and waters within the territorial limits of New Jersey was not governmental.

From these considerations the conclusions reached are that the agreement of 1833 between the Commissioners representing the States of New Jersey and New York, having been confirmed by their respective Legislatures, and approved by the Congress of the United States, established the boundary line between this State and the State of New York in the middle of the Hudson River and of the Bay of New York; and that the sovereignty of the State of New Jersey is co-extensive with the territorial limits thus established, subject only to such extra-territorial jurisdiction of a juridical character as was, by the said compact, conceded to the State of New York, from

which it results that the sovereign power of taxation over all the territory thus defined resides in the State of New Jersey.

These conclusions lead to the affirmance of the tax levied upon the lands of the prosecutor.

197 New Jersey Supreme Court, November Term, 1903.

THE CENTRAL RAILROAD OF NEW JERSEY
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY ET AL.

On Certiorari.

Rule Affirming Taxes.

The Court having heard the argument of counsel, and inspected the assessment of taxes and proceedings removed by the writ in this cause, and duly considered the reasons filed:—

It is ordered that said taxes be affirmed with costs. Entered November 24, 1903.

On motion of

ROBERT CAREY, *Att'y.*

198 New Jersey Court of Errors and Appeals.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Prosecutor and Plaintiff in Error,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY ET AL., Defendants in Error.

In Error to Supreme Court.

And now at this day the plaintiff in error assigns the following causes of error:

1. Because the judgment aforesaid was given for the said defendants against the said prosecutor, the plaintiff in error, whereas by the law of the land it ought to have been given for the said prosecutor against the said defendant.

2. Because by the judgment aforesaid the assessment of taxes against the lands of the prosecutors, the plaintiff in error, was affirmed with costs, whereas by the law of the land, said assessment of taxes ought to have been set aside and for nothing holden with costs to the prosecutors.

the prosecutors.

199 3. Because by the judgment aforesaid the lands of the plaintiff in error under the tide waters of New York Bay are adjudged to be within the corporate limits of Jersey City, where as by the law of the land said lands should have been adjudged to be outside of the corporate limits of Jersey City and not subject to taxation therein.

4. Because by the judgment aforesaid it is adjudged that the State of New Jersey, under the treaty of 1833, between the States of New York and New Jersey, has sovereignty over the lands of the plaintiff lying under the tidewaters of New York Bay and the power to tax the same, whereas by the law of the land no such sovereignty or power to tax is possessed by the State of New Jersey.

5. Because by the judgment aforesaid, it is adjudged that the State of New Jersey, or by its authority, Jersey City has sovereignty and jurisdiction for the purpose of taxation over the lands of the plaintiff in error lying under the tide waters of New York Bay, whereas by the law of the land neither the State of New Jersey nor Jersey City has any jurisdiction for purposes of taxation over said lands, for the reason that the same lie beyond the sovereignty of the State of New Jersey, and outside of the jurisdiction of Jersey City, and that the taxation of such land by New Jersey, or by Jersey City, would deprive the plaintiff in error of its property without due process of law, and contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

6. Because by the judgment aforesaid it is adjudged that the State of New Jersey, or by its authority, Jersey City, has sovereignty and jurisdiction for the purpose of taxation over the lands of the plaintiff in error, lying under the tide waters of New York Bay, whereas by the law of the land neither New Jersey nor Jersey
200 City has any jurisdiction for taxation over said lands, because under the treaty made between the State of New York and the State of New Jersey for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, made in the year Eighteen hundred and thirty-three, confirmed by the State of New York on February 5, 1834, and by the State of New Jersey on February 26, 1834, and approved by the Congress of the United States on June 28, 1834, jurisdiction over said lands under water, including the right of taxation, was ceded to and acknowledged to be in the State of New York exclusively, and the taxation thereof under authority of the State of New Jersey, deprives the plaintiff in error of its property without due process of law, and contrary to the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

7. Because by the judgment aforesaid, it is adjudged that the State of New Jersey, or by its authority, Jersey City, has sovereignty and jurisdiction for the purpose of taxation over the lands of the plaintiff in error, lying under the tide waters of New York Bay, whereas by the law of the land neither New Jersey nor Jersey City has any jurisdiction for taxation over said lands, because under the treaty made between the State of New York and the State of New Jersey for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, made in the year Eighteen hundred and thirty-three, confirmed by the State of New York on February 5, 1834, and by the State of New Jersey on February 26, 1834, and approved by the Congress of the United States on June 28th, 1834, jurisdiction over said lands under water, including the right of taxation, was ceded to and acknowledged to be in the State of New York exclusively, and taxation thereof under authority of

the State of New Jersey, impairs the obligation of the contract
201 aforesaid arising out of said treaty and is contrary to the provisions of Paragraph 1 of Section 10 of Article I. of the Constitution of the United States.

And the said, The Central Railroad Company of New Jersey, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of the said judgment, &c.

BEDLE, EDWARDS & THOMPSON,
Attorneys for and of Counsel with Plaintiff in Error.

202 1299.

STATE OF NEW JERSEY:

Court of Errors and Appeals, March Term, 1905.

14–420.

In Error.

No. 11 of March Term, 1905.

CENTRAL RAILROAD OF NEW JERSEY
and
JERSEY CITY.

Date: June 19th, 1905.
Chancellor presiding.
On Opinion of GARRISON, *J.*, in Supreme Court.

Check list.	Affirm.	Rever'l.
The Chancellor	1	
" Chief Justice	1	
Mr. Justice Dixon	1	
" " Fort	1	
" " Pitney	1	
Judge Bogert	1	
" Vredenburgh	1	
" Vroom	1	
" Green	1	
" Gray	1	
Totals	10	0

Endorsed: "Filed Jun- 19, 1905. S. D. Dickinson, Clerk."

203 No. 11.

New Jersey Court of Errors and Appeals.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Plaintiff in Error,

v.

THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendants in Error.

Argued by briefs filed at March Term, 1905.
Decided.
Mr. Frank Bergen, Mr. William D. Edwards and Mr. George Holmes for plaintiff in error.
Mr. George L. Record for defendants in error.

Per curiam:

The judgment of the Supreme Court, brought here by this writ of error, is affirmed, for the reasons given by Mr. Justice Garrison, in his opinion in that court, reported in 41 Vroom, page 81.

[Endorsed:] State of New Jersey. Department of State. Comparing and Certifying Division Copy Correct Compared by J. L. Hendricks Original Read by E. H. Weatherby J. L. Hendricks, In charge of Division.

204 New Jersey Court of Errors and Appeals, March Term, 1905.

Between—

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Prosecutor, Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY ET ALS., Defendants in Error.

In Error to Supreme Court.

Order on Affirmance of Judgment.

This cause having been duly argued at the March Term, 1905 of this court by William D. Edwards and Frank Bergen of counsel for the plaintiff in error, and George L. Record of counsel for the defendant- in error, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court—

It is thereupon, on this 19th day of June in the year of our Lord one thousand nine hundred five ordered and adjudged that the judgment of the Supreme Court, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

GEORGE L. RECORD,
Attorney of Defendant- in Error.

[Endorsed:] New Jersey Court of Errors and Appeals. March Term, 1905 Central R. R. Co. of N. J. Pl'tff in Error, *vs.* Mayor & Alderman of Jersey City, Def't in Error. In Error to Supreme Court. Order Affirming Judgment. Bedle, Edwards & Holmes Att'ys Filed July 11, 1906 S. D. Dickinson Clerk. It is consented that the within order be filed & entered. Bedle Edwards & Holmes, Att'ys for Pros. & Pl'ffs in Error Dated July 11/06 State of New Jersey Department of State Comparing and Certifying Division Copy correct Compared by J. L. Hendricks, Original Read by E. H. Weatherby J. L. Hendricks, In charge of Division.

205 New Jersey Court of Errors and Appeals.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Prosecutor and Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY ET AL., Defendants in Error.

In Error to N. J. Court of Errors and Appeals.

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the Court of Errors and Appeals, in the last resort in all causes in the State of New Jersey, in the above entitled matter, there is manifest error in this, to wit:

1. Because the judgment of the Supreme Court of the State of New Jersey herein was affirmed by said Court of Errors and Appeals, whereas by the laws of the land, it ought to have been set aside and for nothing holden.

2. Because by the judgment aforesaid the assessment of taxes against the lands of the prosecutor, the plaintiff in error, and described in the record of this cause was affirmed with costs, whereas by the law of the land, the said assessment of taxes ought to have been set aside, and for nothing holden, with cost to the prosecutor.

3. Because by the judgment of said Court of Errors and Appeals aforesaid, the lands of the plaintiff in error under the tide waters of New York Bay are adjudged to be within the corporate limits of Jersey City, whereas by the law of the land, said lands should
206 have been adjudged to be outside of the corporate limits of Jersey City, and not subject to taxation therein.

4. Because by the judgment aforesaid it is adjudged that the State of New Jersey under the compact or treaty of 1833 between the States of New York and New Jersey, and published in the General Statutes of New Jersey on page 3464 &c., has sovereignty or jurisdiction over the lands of the said plaintiff lying under the tide waters of New York Bay and the power to tax the same, whereas by the law of the land, no such sovereignty, jurisdiction or power to tax is possessed by the State of New Jersey.

5. Because by the judgment aforesaid, it is adjudged that the State of New Jersey, or by its authority Jersey City, has sovereignty or jurisdiction for the purpose of taxation over the said lands of the plaintiff in error, lying under the tide waters of New York Bay, whereas by the law of the land neither the State of New Jersey nor Jersey City has any sovereignty or jurisdiction for purposes of taxation over said lands for the reason that the same lie beyond the sovereignty and jurisdiction of the State of New Jersey, and outside of the sovereignty and jurisdiction of Jersey City, and that the taxation of such land by New Jersey or by Jersey City, would deprive the plaintiff in error of its property without due process of law, and contrary to the provisions of section 1, of the Fourteenth Amendment to the Constitution of the United States.

6. Because by the judgment aforesaid it is adjudged that the State of New Jersey or by its authority, Jersey City, has sovereignty or jurisdiction for the purpose of taxation over the lands of
207 the plaintiff in error, lying under the tide waters of New York Bay, whereas by the law of the land neither New Jersey nor Jersey City has any sovereignty or jurisdiction for taxation over said lands, because under the said treaty or compact made between the State of New York and the State of New Jersey for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two states, made in the year Eighteen hundred and thirty-three confirmed by the State of New York on February 5, 1834, and by the State of New Jersey on February 26, 1834, and approved by the Congress of the United States on June 28, 1834, jurisdiction and sovereignty over said lands under water, including the right of taxation was ceded to and acknowledged to be in the State of New York exclusively, and the taxation thereof by or under authority of the State of New Jersey, deprives the plaintiff in error of its property without due process of law, and contrary to the provisions of section 1, of the Fourteenth Amendment of the Constitution of the United States.

7. Because by the judgment aforesaid, it is adjudged that the State of New Jersey or by its authority, Jersey City, has sovereignty or jurisdiction for the purpose of taxation over the lands of the plaintiff in error, lying under the tide waters of New York Bay whereas by the law of the land neither New Jersey nor Jersey City has any sovereignty or jurisdiction for taxation over said lands, because under the said treaty or compact made between the State of New York and the State of New Jersey for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two states, made in the year eighteen hundred and thirty-three
208 confirmed by the State of New York on February 5, 1834, and the State of New Jersey on February 26, 1834, and approved by the Congress of the United States on June 28, 1834, jurisdiction and sovereignty over said lands under water including the right of taxation was ceded to and acknowledged to be in the State of New York exclusively, and taxation thereof by or under authority of the State of New Jersey impairs the obligation of the contract aforesaid arising out of said treaty and is contrary to the provisions

of paragraph 1, of section 10, of article 1, of the constitution of the United States.

And the said The Central Railroad Company of New Jersey, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of the said judgment &c.

BEDLE, EDWARDS & HOLMES,
Attorneys for and of Counsel with Plaintiff in Error.

209 [Endorsed:] New Jersey Court of Errors and Appeals. The Central Railroad Company of New Jersey, Prosecutor and Plaintiff in error *vs.* The Mayor and Aldermen of Jersey City, *et al.*, Defendants in error. In error Assignments of error Bedle, Edwards & Thompson, Att'ys of Pl't'ff in error Filed Dec. 17, 1906 S. D. Dickinson Clerk, State of New Jersey Department of State Comparing and Certifying Division Copy correct Compared by J. L. Hendricks, Original Read by E. H. Weatherby J. L. Hendricks, In charge of Division.

210 THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Prosecutor,
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY, and ROBERT DAVIS,
Collector Thereof, Defendants.

Petition for Writ of Error.

To the Honorable William J. Magie, Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey:

The petition of the Central Railroad Company of New Jersey, respectfully shows:

That on the third day of July, in the year nineteen hundred and one, your petitioner brought suit by certiorari in the Supreme Court of New Jersey, against the Mayor and Aldermen of Jersey City, and Robert Davis, Collector thereof, for the purpose of setting aside an alleged assessment of taxes on certain lands belonging to your petitioner lying under the waters of New York Bay and below high-water mark for the reason that said lands were not subject to the jurisdiction of the said City although within its geographical boundaries according to the true construction and meaning of a certain compact or agreement made and entered into between the States of New Jersey and New York, dated September sixteenth, eighteen hundred and thirty-three and confirmed by the Legislature of the State of New York by an act passed on the fifth day of February, eighteen hundred and thirty-four, and confirmed by the Legislature of the State of New Jersey, by an act passed on the twenty-
211 sixth day of February eighteen hundred and thirty-four, and approved by an act of the Congress of the United States passed June twenty-eighth, eighteen hundred and thirty-four; that said

suit was prosecuted in said Supreme Court and after being therein heard and considered the said Supreme Court ordered and adjudged that the assessment of taxes and proceedings removed to said Court by said writ of certiorari be affirmed with costs.

That subsequently the said judgment of the Supreme Court was removed by writ of error to the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, and heard therein, whereupon the said Court of Errors & Appeals in the last resort in all causes ordered and adjudged that said judgment of the Supreme Court be affirmed with costs, and afterwards the said judgment of said Court of Last Resort was duly entered at Trenton in the State of New Jersey.

That the said judgment of the said Court of Errors and Appeals is a judgment of the highest court of record of the State of New Jersey, and that the judgment in the said Court is final.

Your petitioner further shows that the right of the Mayor & Aldermen of Jersey City to assess and impose and the right of said Robert Davis to collect taxes on or from the said land of your petitioner lying under the waters of New York Bay depends upon the true construction of the said agreement or compact made between the States of New Jersey and New York in the year eighteen hundred and thirty-three and confirmed as aforesaid, and that the order and judgment of said Supreme Court and of said Court of last resort are
in conflict with and repugnant to the true meaning and effect
212 of said compact or agreement, and that the said judgments
are in conflict with the Fourteenth Amendment of the Constitution of the United States.

Your petitioner therefore prays for the allowance of a writ of error to the Court of Errors and Appeals in The Last Resort in all causes in the State of New Jersey in order that the judgment of the said Court may be re-examined and affirmed or reversed in the Supreme Court of the United States.

And your petitioner will ever pray &c.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,
By BEDLE, EDWARDS & HOLMES, *Its Attorneys.*

213 STATE OF NEW JERSEY, *County of Essex, ss:*

Joseph D. Bedle being duly sworn on his oath deposes and says that he is one of the Attorneys for the Central Railroad Company of New Jersey in the above entitled cause and that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

JOSEPH D. BEDLE.

Sworn and subscribed before me this twenty-third day of July, 1906.

FRANK E. WILLIAMSON,
Notary Public, New Jersey.

214 The writ of error as prayed for in the foregoing petition is hereby allowed this eleventh day of December Nineteen hundred and six the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of One thousand Dollars.

Dated at Trenton, this eleventh day of December Nineteen hundred and six.

W. J. MAGIE,
Chancellor and Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

215 [Endorsed:] Central Railroad Company of New Jersey, Prosecutor, *vs.* Mayor & Aldermen of Jersey City and Robert Davis, Collector thereof, Defendants. Petition for Writ of Error. Bedle, Edwards & Holmes, Atty's of Pros. Filed Dec 17, 1906 S. D. Dickinson Clerk. State of New Jersey Department of State Comparing and Certifying Division Copy Correct Compared by J. L. Hendricks, Original Read by E. H. Weatherby J. L. Hendricks, In charge of Division.

216 THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Prosecutor,
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY, and ROBERT DAVIS,
Collector Thereof, Defendants.

On Petition for Writ of Error.

Order.

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, and upon examination of said petition and the record in this matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is ordered that a writ of error be and is hereby allowed to this Court from the Supreme Court of the United States, and that the bond presented by said petitioner be and the same is hereby approved.

W. J. MAGIE,
Chancellor and Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

217 [Endorsed:] Central Railroad Company of New Jersey *vs.* The Mayor and Aldermen of Jersey City and Robert Davis, Collector thereof. On Petition Order Filed Dec 17, 1906. S. D. Dickinson, Clerk. State of New Jersey Department of State Comparing and Certifying Division Copy Correct Compared by J. L. Hendricks, Original Read by E. H. Weatherby J. L. Hendricks, In Charge of Division.

218 THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Prosecutor, Plaintiff in Error,
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY, and ROBERT DAVIS,
Collector Thereof, Defendants in Error.

Know all men by these presents, that we, the Central Railroad Company of New Jersey, a corporation, as principal and The Fidelity and Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto The Mayor and Aldermen of Jersey City, in the sum of One thousand dollars, to be paid to the said obligee, its successors, representatives and assigns, to the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated the twentieth day of July nineteen hundred and six.

Whereas, the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States, to reverse the judgment rendered in the above entitled cause by the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey.

219 Now therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

Signed, sealed and delivered in the presence of

THE CENTRAL RAILROAD COMPANY
OF NEW JERSEY,

[CORPORATE SEAL.]

By W. G. BESLER, *Vice Pres't & Gen. M'g'r.*

Attest:
G. O. WATERMAN, *Secretary.*

FIDELITY & DEPOSIT COMPANY
OF MARYLAND,

[CORPORATE SEAL.]

By HENRY B. PLATT, *Vice-President.*

Attest:
JAMES R. KINGSLEY, *Attorney-in-fact.*

220 STATE OF NEW YORK, *County of New York, ss:*

Be it remembered that on this twentieth day of July Nineteen hundred and six before me, the subscriber, personally appeared George O. Waterman who being duly sworn according to law makes proof to my satisfaction that he well knows the corporate seal of the Central Railroad Company of New Jersey. That the seal annexed

to the foregoing instrument is the proper corporate seal of said corporation. That the same was thereto affixed and the said instrument signed and delivered by W. G. Besler who was on the day of the date thereof the Vice President of said corporation, as the voluntary act and deed of said corporation in the presence of deponent who thereupon signed the same as subscribing witness. That deponent is Secretary of said Company.

Sworn and subscribed to the day and year aforesaid.

G. O. WATERMAN.

BEN VAN D. FISHER,
Master in Chancery of New Jersey.

221 STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 20th day of July, 1906, before me the subscriber, a Commissioner of Deeds for the State of New Jersey, in the State of New York, duly Commissioned and sworn, personally came James R. Kingsley, who being by me duly sworn, on his oath, saith: that he is the attorney-in-fact of the Fidelity and Deposit Company of Maryland, and that he resides in the City of New York, and that he knows Henry B. Platt of the Fidelity and Deposit Company of Maryland, and he knows too, the corporate seal of the said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by the said James R. Kingsley and that the said instrument, signed by the said Henry B. Platt as Vice-President of the said Company, attested by the said James R. Kingsley as attorney-in-fact by order of the Board of Directors of the said Company, in deponent's presence as a voluntary act and deed of the said company; that the liabilities of the said Company do not exceed its assets, as ascertained in the manner provided in Chapter 103 of the Laws of 1894, of the State of New Jersey, and that the following is a true copy of a resolution of the Board of Directors of the said Fidelity and Deposit Company of Maryland, passed on the sixth day of March, 1901, at a regular and lawful meeting, to wit:

"Resolved, that Henry B. Platt, Vice-President, or George Sewell " Bonner, attorney, or Frank H. Platt, Edward T. Platt, Joseph A. " Flynn, Hugh M. Allwood, and James R. Kingsley, attorneys-in- " fact of this Company in the State of New York, be, and each of " them is hereby authorized and empowered to sign, execute and " deliver any and all bonds and undertakings for or on behalf of " this Company, and to attach thereto the seal of the corporation, the " same to be attested by the said George Sewell Bonner, Attorney of " the Company or by either one or the other persons above named, " as the occasion may require."

That the order of the Chancellor of the State of New Jersey, dated January eighth, A. D. eighteen hundred and ninety-four, providing for the acceptance of the said Company alone as sufficient surety in said Court, except where such is expressly forbidden by Statute, stands and remains unrevoked and in full force and effect, and the deposit made thereunder with the Clerk of the Court of Chancery

of the said State remains on deposit according to the terms of said order.

Sworn to and subscribed in the City of New York in the County of New York, and State of New York this twentieth day of July, 1906, before a Commissioner of Deeds for the State of New Jersey, in the State of New York, duly commissioned and sworn.

JAMES R. KINGSLEY.

[OFFICIAL SEAL.]

J. WHITMORE BARRY,
A Commissioner of Deeds for the State of New Jersey.

222 [Endorsed:] The Central Railroad Company of New Jersey, Prosecutor, *vs.* The Mayor & Aldermen of Jersey City, and Robert Davis, Collector thereof · Recognizance Approved December 11/1906 W. J. Magie C Filed Dec. 17, 1906 S. D. Dickinson, Clerk.

223 STATE OF NEW JERSEY:

I, S. D. Dickinson, Secretary of State of the State of New Jersey, and *Ex-Officio* Clerk of the Court of Errors and Appeals, do hereby certify that the original Bond in the case of the Central Railroad Company of New Jersey, prosecutor, Plaintiff in Error, against the Mayor and Aldermen of Jersey City and Robert Davis Collector thereof, Defendants in Error, was lodged in this office on the Seventeenth day of December, nineteen hundred and six.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, at Trenton, this Twenty-ninth day of December, A. D. 1906.

[Seal of the Secretary of the State of New Jersey.]

S. D. DICKINSON, *Clerk.*

224 THE UNITED STATES OF AMERICA, *ss:*

To the Mayor and Aldermen of Jersey City, and Robert Davis, Collector thereof, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, wherein The Central Railroad Company of New Jersey, prosecutor, is plaintiff in error, and you The Mayor and Aldermen of Jersey City, and Robert Davis, Collector thereof are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as is in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the subscriber Chancellor and Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in the

State of New Jersey, this eleventh day of December in the year of our Lord one thousand nine hundred and six.

W. J. MAGIE,
Presiding Judge.

225 [Endorsed:] 1299 The Central Railroad of New Jersey *vs.* The Mayor and Aldermen of Jersey City, and Robert Davis Collector thereof Citation Filed Dec. 11, 1906 S. D. Dickinson Clerk Service of within citation acknowledged this Dec. 15th 1906 Robert Carey Att'y for defendants.

226 UNITED STATES OF AMERICA, *ss:*

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

The President of the United States to the Honorable the Judges of "The Court of Errors and Appeals in the Last Resort in all causes" of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals in the last resort in all causes, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Central Railroad Company of New Jersey, prosecutor, plaintiff in Error, and the Mayor & Aldermen of Jersey City and Robert Davis, Collector thereof, defendants in error, upon the alleged levy and assessment of certain taxes on the property of said plaintiff in error for the year one thousand eight hundred and ninety-nine, wherein was drawn in question the validity of a treaty or statute or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute or of an authority exercised under said statute on the ground of their being repugnant to the Constitution treaties or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the constitution of a treaty or statute or commission held under the United States, and the decision was against the title, right privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission, a manifest error has hap-

227 pened, to the great damage of the said The Central Railroad Company of New Jersey the said prosecutor and plaintiff in error, as by this complaint appears, we, being willing that error, if any hath been should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the Eleventh day of January next in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further

to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the Thirteenth day of December in the year of our Lord one thousand nine hundred and six.

H. D. OLIPHANT, *Clerk.*

228 [Endorsed:] 1299 Central Railroad Company of New Jersey, Prosecutor, *vs.* Mayor & Aldermen of Jersey City and Robert David, Collector thereof, Defendants Writ of Error Bedle, Edwards & Holmes, Att'ys of Pros. Filed Dec 17, 1906 S. D. Dickinson, Clerk.

229 STATE OF NEW JERSEY:

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby certify, that the original Writ of Error in the case of the Central Railroad Company of New Jersey, Prosecutor, Plaintiff in Error, against the Mayor and Aldermen of Jersey City and Robert Davis, Collector thereof, Defendants in Error, was lodged in this office on the Seventeenth day of December, nineteen hundred and six, together with a copy thereof for the Defendants in Error.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, this Twenty-ninth day of December, A. D. 1906.

[Seal of the Secretary of the State of New Jersey.]

S. D. DICKINSON, *Clerk.*

230 STATE OF NEW JERSEY:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within-entitled cause, with all things concerning the same.

Witness my hand and the seal of the New Jersey Court of Errors and Appeals, this 31st day of December, A. D. 1906.

[Seal of the Secretary of the State of New Jersey.]

S. D. DICKINSON, *Clerk.*

Endorsed on cover: File No. 20,534. New Jersey court of errors and appeals. Term No. 203. The Central Railroad Company of New Jersey, plaintiff in error, *vs.* The Mayor and Aldermen of Jersey City, and Robert Davis, collector thereof. Filed January 17th, 1907. File No. 20,534.

Office Supreme Court, U. S.
FILED.
MAR 16 1908
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

October Term, 1907.

No. 203

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY, *et al.*,

Defendants in Error.

On Certiorari

ON WRIT OF ERROR TO NEW JERSEY COURT OF ERRORS AND APPEALS.

Brief for Plaintiff in Error

FRANK BERGEN,
WM. D. EDWARDS,
GEORGE HOLMES,
Counsel for Plaintiff in Error.

(20,534)

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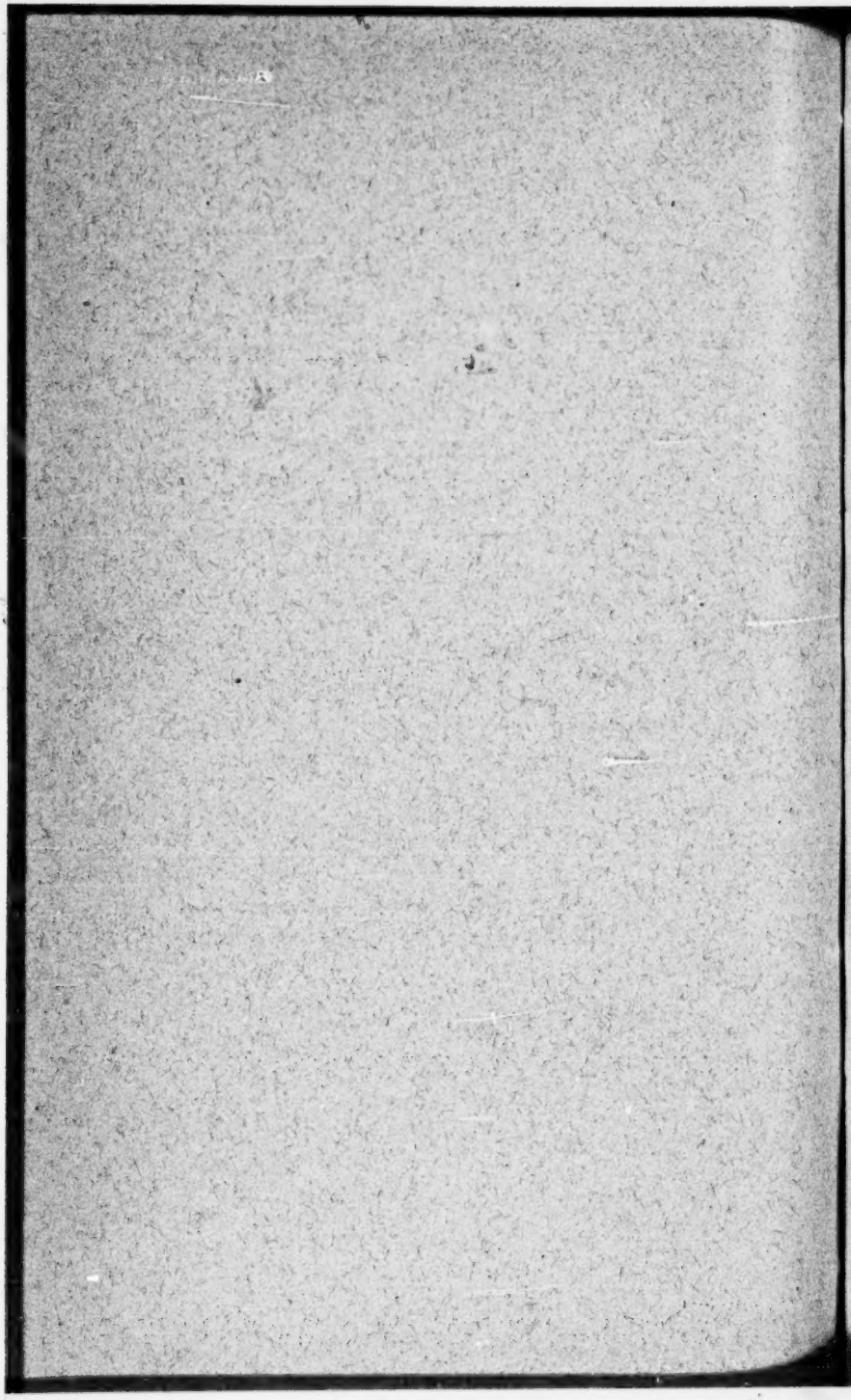

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Supreme Court of the United States.

October Term, 1907.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, *Plaintiff in Error,* *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY, *et al,* *Defendants in Error.*	*On Writ of Error to New Jersey Court Of Errors and Appeals.*

Brief for Plaintiff in Error.

I.

GENERAL STATEMENT OF THE CASE.

In the year 1899 the tax commissioners of Jersey City attempted to make an assessment of taxes on property belonging to the Central Railroad Company of New Jersey, being lot numbered 22 in block 2154 and lot numbered 1 in block 1497 on a map referred to in the testimony. The valuation put upon lot 22 was $1,603,000 and on lot 1, $771,000. Record, p. 2.

The principal objection to the assessment of taxes in question is that the land is not within the jurisdiction of Jersey City or of New Jersey, although within the geographical boundaries of the state The

land referred to is under water; it was assessed separately from the upland; it lies wholly under the waters of New York Bay and below low-water mark on the New Jersey shore. Record, p. 6.

The case was heard on *certiorari* in the New Jersey Supreme Court and decided in favor of the city. Record, p. 110. The decision of the Supreme Court was reviewed by the Court of Errors and Appeals of New Jersey and the decision of the Supreme Court affirmed for the reasons given by the Supreme Court. Record, p. 121.

The question, as correctly stated in the opinion of the New Jersey Courts, "depends upon the interpretation of Article III of the compact or agreement made by the states of New York and New Jersey on September 16, 1833, and confirmed by the legislatures of both states and approved by Congress in 1834." Record, p. 110. And it is, as the court states, "one of first impression." Record, p. 113. The New Jersey courts held that by virtue of that compact Jersey City has jurisdiction over the property for the purpose of taxation. The plaintiff in error contends that the taxation of its property is unauthorized by the compact, and if enforced would amount to a deprivation of its property without due process of law and in violation of section one of the 14th amendment of the Constitution of the United States. The case of *Louisville and Jeffersonville Ferry Company* v. *Kentucky*, 188 U. S., p. 385, holds that this court has jurisdiction to review proceedings by a state or its representatives to collect taxes on property beyond the jurisdiction of the state.

The plaintiff in error interposed the 14th amendment as a bar to proceedings of the tax commissioners; but the objection so made was overruled. Record, p. 119. As this court is the final tribunal in which the rights of the plaintiff in error secured by the 14th amendment can be determined, the true meaning of the compact must here be ascertained, for the reason that it is the only color of authority for the action of the tax commissioners. *C. B. & Q. R. R. Co.* v. *Drainage Comm'rs,* 200 U. S., 561, 580-1; *C. B. & Q. R. R. Co.* v. *Chicago,* 166 U. S., 226; *Fayerweather* v. *Ritch,* 195 U. S., 276, 297. Without the compact the proceedings of the taxing officers would be a mere trespass with no pretense of justification or excuse.

II.

THE COMPACT OF 1833.

For convenience of reference the agreement, which appears at page 78 of the record, is re-printed here.

"Agreement made and entered into by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, Commissioners duly appointed on the part and behalf of the State of New York, in pursuance of an act of the legislature of the said state, entitled 'An act concerning the territorial limits and jurisdiction of the State of New York, and the State of New Jersey,' passed January eighteen, eighteen hundred and thirty-three, of the one part and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, Commissioners duly appointed on the part and behalf of the State of New Jersey, in purusance of an act

of the legislature of the said state, entitled 'An act for the settlement of the territorial limits and jurisdiction between the states of New Jersey and New York,' passed February sixth, eighteen hundred and thirty-three, of the other part.

"3. Art. I. The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the water between Staten Island and New Jersey, and of Raritan bay, to the main sea, except as hereinafter otherwise particularly mentioned.

"4. Art. II. The state of New York shall retain its present jurisdiction of and over Bedlow's and Ellis' islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that state.

"5. Art. III. The state of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the waters of Hudson river, lying west of Manhattan island and to the south of the mouth of Spuyten Duyvel creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the state of New Jersey, that is to say:

"(1). The state of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan island and New Jersey.

"(2). The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said state, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the state of New York, which now exist or which may hereafter be passed.

"(3). The state of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters; provided that the navigation be not obstructed or hindered.

"6. Art. IV. The state of New York shall have exclusive jurisdiction of and over the waters of the Kill von Kull, between Staten Island and New Jersey, to the westermost end of Shooter's island in respect to such quarantine laws and laws relating to passengers as now exist, or may hereafter be passed under the authority of that state, and for executing the same; and the said state shall also have exclusive jurisdiction for the like purposes of and over the waters of the sound from the westermost end of Shooter's island to Woodbridge creek, as to all vessels bound to any port in the said state of New York.

"7. Art. V. The state of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan bay, lying westward of a line drawn from the lighthouse at Prince's bay to the mouth of Matavan creek, subject to the following rights of property and jurisdiction of the state of New York, that is to say:

"(1). The state of New York shall have the exclusive right of property in and to the land under water lying between the middle of the said waters and Staten Island.

"(2). The state of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the state of New Jersey, which now exist or which may hereafter be passed.

"(3). The state of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters; provided that the navigation of the said waters be not obstructed or hindered.

"8. Art. VI. Criminal process issued under the authority of the state of New Jersey against any person accused of an offense committed within that state, or on board of any vessel being under the exclusive

jurisdiction of that state, as aforesaid, or committed against the regulations made or to be made by that state, in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the state of New Jersey against any person domiciled in that state, or against property taken out of that state to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New York, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the state of New York, or fastened to a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New York.

"9. Art. VII. Criminal process issued under the authority of the state of New York against any person accused of an offense committed within that state, or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid, or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the state of New York against any person domiciled in that state, or against property taken out of that state to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the state of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be un-

der arrest, or such property shall be under seizure by virtue of process or authority of the state of New Jersey.

"10. Art. VIII. This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively, and when approved by the Congress of the United States."

The agreement was confirmed and approved, as therein provided. Record, pp. 78-81, and Gen. Stats. of N. J., p. 3464.

There are six different degrees of jurisdiction of the states along the line defined in the first article of the compact:

(1) From the 41st degree of north latitude to Spuyten Duyvil creek, which is the northerly boundary of Manhattan Island.

Between those two points New Jersey has exclusive jurisdiction for all purposes to the middle of the Hudson river.

(2) From Spuyten Duyvil creek to the point where the Kill von Kull joins New York bay.

Between those points New York has exclusive jurisdiction over the land and water to low water mark on the New Jersey shore except that New Jersey has exclusive jurisdiction over the wharves, docks and improvements made and to be made on its shore and over all vessels aground thereon or fastened to any wharf or dock, except that such vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the state of New York. New Jersey also has the right to regulate fisheries on the westerly side of the middle of the river and bay between those points, provided navigation be not obstructed. Art. III.

(3) From the point where the Kill von Kull joins New York bay to the westernmost end of Shooter's Island.

Between those points New York has exclusive jurisdiction over *the waters* of the Kill in respect to quarantine laws and laws relating to passengers, and for executing the same. General jurisdiction is in New Jersey. Art. IV.

(4) From the westernmost end of Shooter's Island to Woodbridge creek.

Between those points New York has jurisdiction in respect to quarantine laws and laws relating to passengers as to all vessels bound to any port in the state of New York. Art. IV. General jurisdiction is in New Jersey.

(5) From Woodbridge creek to a point in Raritan bay.

Between those points New Jersey has exclusive jurisdiction of and over *the waters*. New York, however, has the right of property in the land to the middle of the sound and jurisdiction over the wharves, docks and improvements made and to be made on the shore of Staten Island and of all vessels aground on said shore or fastened to any dock or wharf, except that such vessels shall be subject to the quarantine or health laws and laws relating to passengers of the state of New Jersey. New York may also regulate the fisheries between the shore of Staten Island and the middle of said waters, provided navigation be not obstructed.

(6) Articles VI and VII of the compact are reciprocal provisions giving to each state authority to serve criminal and civil process in certain cases upon any of the waters within the exclusive jurisdiction of either state. These pro-

visions seem to confirm the conclusion that the expression "exclusive jurisdiction" used repeatedly in the compact is as absolute as it appears to be.

As the property of the plaintiff in error lies under the waters of New York bay, the part of the compact applicable thereto is the second subdivision as indicated above. THE ONLY ELEMENT OF JURISDICTION THAT NEW JERSEY HAS OVER THE PROPERTY IS THE RIGHT TO REGULATE FISHERIES IN THE WATER COVERING THE SAME, PROVIDED THAT NAVIGATION BE NOT OBSTRUCTED. THE PRIMARY QUESTION, THEREFORE, IN THIS CASE IS: WHETHER THE RIGHT TO REGULATE FISHERIES IN THE WATER COVERING THE LAND INVOLVES THE POWER TO TAX THE LAND ITSELF.

III.

EXAMINATION OF THE COMPACT.

It may be helpful to examine the compact so far as it relates to the question of jurisdiction of New York and New Jersey over the waters of Hudson river and New York bay and over the land thereunder between Manhattan Island and the New Jersey shore before considering its application to the specific question raised by the plaintiff in error.

It will be noticed that the compact provides a reciprocal arrangement designed to give or concede to New York jurisdiction over the water and over the land under the water west of Manhattan Island (Art. III), and to give to New Jersey jurisdiction over the water of the sound between Perth Amboy and Staten Island (Art. V.) This fact has sometimes

been overlooked in expounding the compact. In 1833 the city of New York was already an important seaport and jealous of control of contiguous water and territory, and Perth Amboy had long cherished the hope of becoming one of the most flourishing ports on the Atlantic coast. There is, however, a significant difference between Article III and Article V. By Article III New York obtained the undisputed right to exercise jurisdiction over the water and also over the *land* under the water of the river and bay; but by Article V New Jersey obtained jurisdiction only over the *water* of the sound south of Woodbridge creek, nothing being said about jurisdiction over the *land* thereunder east of its centre line. Failure to realize this difference led to a remarkable error in one of the most important decisions construing the agreement, which will be referred to hereafter.

The first article of the compact states that the boundary line between the states "shall be the middle of said [Hudson] river; of the bay of New York, of the waters between Staten Island and New Jersey, and of Raritan bay to the main sea, *except as hereinafter otherwise particularly mentioned.*" It is a noteworthy fact that notwithstanding this clause which we print in italics there is no *particular mention* of any different location of any part of the boundary line *eo nomine* in any subsequent part of the agreement.

It is no doubt true that the mere establishment of a boundary line by agreement between states would *ipso facto* give to each state entire jurisdiction to that line in the absence of any qualifying expression,

although the line previously had been located elsewhere. In the compact under consideration, however, it is perfectly clear that the jurisdiction of the respective states is *not limited* by the boundary line mentioned in the first article. In order, therefore, to give literal effect to the words "except as hereinafter otherwise particularly mentioned" in the first article, it must be held that where exclusive jurisdiction was given to one state or to the other beyond that line it had the legal effect of transposing the boundary line accordingly, because there is no other provision in the compact which can possibly be held to vary the location of the line. This view of that article has been taken in litigation to be noticed later.

We do not, however, think it is necessary that the provisions giving jurisdiction to the respective states beyond the boundary line described in the first article must be construed to have the effect of changing the location of the boundary line so as to concur with the outlines of such extended jurisdiction, as there is nothing to prevent one state (with the consent of Congress) from making a compact to give another state jurisdiction over a part of its territory, either for some specific purpose, or for all purposes of government. The state giving such jurisdiction, or its grantee, might still continue to be the proprietor of the land within its geographical boundaries. If New Jersey should buy a tract of land in the Adirondacks there could be no doubt about the ownership of the land or the identity of the government that had power to tax it.

It has been said that the second article of the compact contains the exception referred to in the first (42 N. Y., 294); but there is no more reason to think that the second article contains the exception than that the third does, or that both of them do. Neither of those articles purports to vary the boundary line from the route described in the first article, and the first article does not state that the defined line is subject to but *one* exception in the subsequent parts of the agreement.

The language in the second article, which permitted New York to retain its then present jurisdiction over Bedloe's and Ellis Islands and exclusive jurisdiction over the other islands referred to, is certainly no more clearly indicated as an exception than the language in the third article, which states that New York "shall have and enjoy *exclusive jurisdiction* of and over the waters of the bay of New York and of and over all the waters of Hudson river lying west of Manhattan Island and south of Spuyten Duyvil creek, and of and over the lands covered by the said waters below low water mark on the westerly or New Jersey side thereof." We think that parts of Articles II, III, IV and V contain the exception or exceptions referred to in Article I; that the effect of the agreement was (1) to establish a property boundary line between the states by Article I; (2) to confirm the jurisdiction previously exercised by New York over Bedloe's and Ellis Islands and the other islands referred to in Article II, and (3) to confer on New York general jurisdiction for all purposes of government over *the water and land under the water* west

of Manhattan Island and south of Spuyten Duyvil creek to low water mark on the New Jersey shore, as far south as the Kill von Kull, subject to the property right of New Jersey to the boundary line prescribed in the first article, and to the limited jurisdiction conferred on New Jersey over wharves, docks and improvements made and to be made on its shore, and over all vessels aground on its shore or fastened to any dock or wharf along the same, and to regulate fisheries, provided navigation be not thereby obstructed. These provisions conferring jurisdiction on New Jersey in these minor and exceptional matters confirm the view that "exclusive jurisdiction" *for all other purposes* was given or conceded to New York. *Expressio unius exclusio alterius est.*

IV.

CASES IN WHICH THE COMPACT HAS BEEN CONSIDERED.

The compact, or some part of it, has occasionally been considered in litigation pending in the courts of New York and New Jersey and in the Federal Courts. We think the most accurate and instructive exposition may be found in the case of *State* v. *Babcock*, 30 N. J. Law, (1 Vroom.) 29, decided in 1862. The opinion in that case is especially valuable because it was written by the late Justice Elmer, who was one of the commissioners who negotiated the compact on the part of New Jersey and signed it. The decision was made on review of an indictment for placing vessels and wrecks on the shore of New Jersey opposite

the City of New York, and it was held that an indictment could not be sustained in New Jersey for placing obstructions to navigation below low water mark on that shore *because New Jersey had no jurisdiction beyond that mark* except to regulate fisheries. Mr. Justice Elmer, at the beginning of his opinion, said:

> "By the compact between the states of New Jersey and New York, ratified by the legislatures of the two states, and approved by Congress, the state of New York has exclusive jurisdiction of and over all the waters of Hudson river, and of and over the lands covered by the said waters, to the low water mark on the New Jersey shore; and the state of New Jersey has the exclusive right of property in and to the land under the water lying west of the middle of the river, and exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the Jersey shore, and on vessels aground on said shore, or fastened to any such wharf or dock, except as to quarantine regulations, and the exclusive right of regulating the fisheries on the westerly side of the middle of the river. The waters of the Hudson, although exclusively within the jurisdiction of New York, are a common highway for all the citizens of the United States. Any obstruction to that highway, placed on the shore above low water mark, which shore remains exclusively within the jurisdiction of New Jersey, either by means of vessels, logs, stones, or other temporary obstructions placed there, or by means of a wharf or other improvements which are injurious to the navigation, is of course indictable in this state; *while obstructions below the low water mark where not only the water but the land under the water are exclusively, except as*

to the fisheries, within the jurisdiction of New York, can only be punished by proceedings in the courts of that state or of the United States."

After reciting the acts for which Babcock had been indicted, Justice Elmer adds:

"It has been earnestly insisted that the safety of property holders on the Jersey shore requires us to hold that obstructions in the river, outside of the low water line, if injurious to the navigation of vessels coming to that shore, are offences against our laws and indictable in our courts. But apprehensions of this kind, which are probably altogether imaginary, will not justify us in departing from the plain meaning of the compact. Although, for some purposes, New Jersey is bounded by the middle of the Hudson river, and the state owns the land under the water to that extent, exclusive jurisdiction, not only over the water, but over the land to the low water line on the Jersey shore, *is in plain and unmistakable language,* granted to, or rather acknowledged to belong to the state of New York. There is no reason to doubt that the tribunals of that state, which have a common interest in preventing all obstructions to the navigation of the waters surrounding their most important city, will not only punish all crimes against our citizens or their own, while in or upon those waters, but will also adequately punish all interference with the navigation. The case does not materially differ from a line between two states on the land which happens to be the scene of a busy population, where a manufactury near to that line, in one state, may be a nuisance to the citizens of the other, whose redress will have to be obtained from the tribunals of the state in which the nuisance is situated."

Mr. Justice Elmer gives a brief historical account of the controversy between the colonies and states of New York and New Jersey relating to the boundary line; the negotiations that led to the agreement, and the reasons why the commissioners representing New Jersey and the legislature of that state approved it.

"As persons not acquainted with the circumstances of the dispute between the states of New Jersey and New York, in regard to their respective rights in the river and bay separating them, have sometimes complained of the compact agreed upon in the year 1833, after a long and troublesome controversy, and after the failure of two previous attempts to terminate it by agreement, as having conceded too much to New York, it may be proper to take this opportunity of explaining the obvious motives which induced the commissioners and the legislature of this state to consent to the terms finally adopted.

"The territories now forming the states of New York and New Jersey, including by name Hudson river, were granted originally by King Charles the Second to his brother, the Duke of York, afterwards James the Second. The duke granted to Lord Berkeley and Sir George Carteret the territory now the state of New Jersey, and described it as 'all that tract of land adjacent to New England, and being to the westward of Long Island and Manhattan Island, and bounded on the east part by the main sea and part by Hudson river, and hath upon the west Delaware bay or river.' Between the date of this grant and the revolution, the charters of New York City, and the proceedings of its authorities, showed that it had always been claimed that the whole of Hudson river, up to the low water mark on the

westerly shore, belonged to that state. But it was only after the Revolution, and when it appeared that, if this claim was acquiesced in, all the wharves and improvements on the Jersey shore would be subject to the control of New York, that New Jersey claimed that, by conquest from the crown, the right of New Jersey was extended to the middle of the river. This led to the appointment of commissioners by the two states to settle the conflicting claims in 1807, and again in 1827, without success.

"In the meantime Judge Washington had decided that the grant of New Jersey limited its territory to the eastern shore of the Delaware river and bay, a decision acknowledged by this court to be correct. *State* v. *Davis,* 1 Dutcher, [25, N. J. Law.] 386. And, what was still more adverse to the claim of this state in reference to the waters of the Hudson, the Supreme Court of the United States laid down the doctrine, that when a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one state is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly created state extends to the river only; and upon this principle they held that the Ohio river was exclusively within the territorial limits of Kentucky, and that Indiana had no jurisdiction over or right to the river. *Handly's Lessee* v. *Anthony,* 5 Wheat., 374.

"When the commissioners of New Jersey and New York again met, in 1833, and it was found that those of the latter state appeared to be desirous of arranging the dispute upon fair and

liberal terms, but deemed it indispensable that their great commercial emporium should have the exclusive control of the police on the surrounding waters, and full power to establish such quarantine regulations as should be found necessary, the commissioners of this state deemed it wise to secure the exclusive property in the soil to the middle of the river and exclusive jurisdiction over the wharves, docks, and other improvements made or to be made on the Jersey shore, and of the vessels fastened thereto, and the right to regulate the adjacent fisheries, leaving to New York, which was thought to be quite as much a burthen as a privilege, the exclusive jurisdiction over offences in or upon the waters or the land covered by the water outside of the low water mark. As it was thought possible that the time might come when Perth Amboy should be an important city, like exclusive jurisdiction over the adjacent waters to low water mark on Staten Island was secured to this state. Nothing has since occurred to make the propriety of this arrangement doubtful; on the contrary, there is every reason to believe that it has secured important rights to this state, which otherwise might have been lost."

The case in our opinion next in importance in which the compact has been considered is *People* v. *C. R. R. Company of New Jersey*, 42 N. Y., page 283, decided in 1870. That case was a proceeding by the attorney-general of the state of New York to compel the company to abate an illeged nuisance. The company having purchased from New Jersey a large tract of land under water at Communipaw had erected certain wharves, bulkheads, pier and railroad tracks for

a distance of a little over a mile into the waters of the Hudson river, in order, as the company contended, to reach navigable water for the purpose of operating a ferry. It was insisted on the part of New York that the work so done by the company was within the jurisdiction of New York, for the reason that it was below low-water mark. The case was decided against the company in the trial court, and the decision of that court was affirmed by the general term of the New York Supreme Court. (48 Barb., 478; 33 How. Pr., 407). The decision of the general term was taken to the Court of Appeals for review. * The opinion in the Court of Appeals was written by Judge E. Darwin Smith, the dissenting opinion by Chief Judge Earl. The opinion of Judge Smith is based upon the idea that the compact of 1833 gave to the state of New York not general or exclusive jurisdiction for governmental purposes over the land and water west of the middle of the river and bay subject to the exceptions stated in Article III of the compact, but "a qualified and limited jurisdiction for police and sanitary purposes and to promote the interests of commerce." The opinion also declares that "immediately upon the adoption or ratification of this convention or treaty the sovereignty and jurisdiction of the respective states extended and attached to that portion of said river and other waters assigned to each state

*The opinion offered in evidence by the defendants in error, and printed in the record at page 92 as the opinion of the Court of Appeals of New York, was not in fact rendered by that court. It is the opinion of Justice Potter, who heard the case alone at a special term of the Supreme Court. An appeal from his decision was taken to the general term and thence to the Court of Appeals. 48 Barber, 478, 481.

respectively by such article [Article 1] up to the line of the boundary therein fixed and established." Judge Smith also draws a distinction between the jurisdiction of New York over the water and the jurisdiction of that state over the land under water west of the middle of the river and bay, saying that "the giving of jurisdiction to this state [New York] over the waters of said river and bay did not imply jurisdiction over the land covered by such waters, much less of land upon the shore not covered by water" (p. 298), and adds that "the care taken to provide that under the concessions of jurisdiction over the waters of said river and bay no right should exist or be exercised upon the *land or over the soil of New Jersey upon the shore or over the bed of the river or bay, and to exclude every pretense for any such claim or right* is particularly shown in the provision that New Jersey should have exclusive jurisdiction of and over all vessels aground on the shore of said state or fastened to any wharf or dock on such shore except that said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the state of New York which now exist or may be hereafter passed." (p. 209).

There are two palpable errors in the view of the compact thus expressed by Judge Smith, viz:

(1.) His statement in substance that by the compact, New Jersey acquired general jurisdiction over the land and water west of the middle of the river and bay, subject to the right of New York to exercise mere "police" control. Article III states the fact to be

EXACTLY THE OPPOSITE. General jurisdiction is plainly conceded to New York, subject to jurisdiction for a few limited and specified purposes in New Jersey; but no jurisdiction is given to New Jersey beyond wharves and vessels fastened to and vessels aground on its shore, except a qualified right to regulate fisheries.

(2.) His statement that the compact gave jurisdiction to New York over the waters of the river and bay, but *not* over the *land* covered by such waters.

The language of the compact on this point seems to be very clear. It is this: "The state of New York shall have and enjoy EXCLUSIVE jurisdiction of and over all the waters of the bay of New York and of and over all the waters of the Hudson river lying west of Manhattan Island, and to the south of the mouth of Spuyten Duyvil creek, AND OF AND OVER THE LANDS covered by the said waters to the low-water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the state of New Jersey." Art. III.

The jurisdiction over the water and over the land covered by the water is exactly the same. Judge Smith evidently had in mind the fifth article of the compact instead of the third while writing his opinion.

The misunderstanding of the compact, so manifest in the opinion of Judge Smith, constitutes the basis of his opinion. We think the decision of the court, however, can be vindicated by sound reasons—the reasons for which Judge Grover voted to reverse—but the reasons given in the opinion of Judge Smith appear to us to be clearly untenable.

Although the case of *State* v. *Babcock* had been decided by the Supreme Court of New Jersey eight years before *People* v., *Central Railroad Company of New Jersey* was decided, it does not appear to have been cited on the argument or referred to in the decision of the case by the Court of Appeals of New York.

There is a very lucid explanation of the compact in the case of *Kiernan* v. *The Norma,* 32 Fed. Rep., 411, decided in 1887, in which the opinion was written by Judge Brown, sitting in the Circuit Court of the United States for the Southern District of New York. Judge Brown agrees with the view expressed by Justice Elmer in the case of *State* v. *Babcock.* The Norma had been libeled in the U. S. District Court for the Southern District of New York while she was in fact made fast to a wharf in the Morris canal basin at Jersey City. The answer alleged that The Norma was not, at the time of seizure, within the jurisdiction of that district court. The court held that as she was made fast to a dock on the New Jersey shore she was "within the second reservation of Article III of the agreement between the states, and she was therefore within the exclusive jurisdiction of New Jersey." p. 414. Judge Brown in his opinion, recites the substance of the first and third articles of the compact, and adds the following comment:

> "These provisions seem to me to show plainly that as respects the land under water between the middle line of the river and the low water mark on the westerly shore, except the docks and

vessels fastened thereto or ashore, *the state of New Jersey has nothing more than the mere right of property—the naked legal title.* She holds this as she might hold title or exclusive right of property in any other land within the state of New York, and in the same way that any private individual might own it; that is, subject to the 'exclusive jurisdiction' which Article III of the agreement confers upon the state of New York. * * * * * The agreement was designed to secure practical ends, to avoid practical difficulties; in doing so it plainly *excluded the state of New Jersey from the functions of sovereignty, legislative or judicial, over the waters of the Hudson below low-water mark on the westerly shore; and gave all functions, legislative and judicial, to the state of New York over these waters, except certain minor privileges as to fisheries reserved to the state of New Jersey.* The boundaries of a state, for practical purposes, are the boundaries that limit its sovereignty and jurisdiction." p. 413.

Other cases in which some part of the agreement was considered are *Hall* v. *DeVoe Mfg. Co.*, 14 Fed. Rep., 183, and *McCarthy* v. *The Sarah E. Kennedy*, 25 Fed. Rep., 569.

In the *DeVoe* case a libel had been filed growing out of a collision between a canal boat and a tug boat in the Kill von Kull. The marshall made return that the respondent (a foreign corporation) was not found in his district, and that he had seized the tug boat, F. W. De Voe, and held the same to respond to the libellant's claim for damages. On motion to set aside the service of process on the ground of want of jurisdiction, it appeared that when the seiz-

ure was made the F. W. De Voe was ly ng in the Kill von Kull between Staten Island and New Jersey, fastened to the end of a dock at Bayonne in New Jersey. The court held that the tug boat, being fastened on the westerly side of Kill von Kull was within the jurisdiction of New Jersey, and denied the motion to set aside the attachment. The action was brought in the United States District Court for the District of New Jersey. The case was reviewed in this court, 108 U. S., 401, and the same conclusion reached.

As the vessel was in the Kill von Kull and fastened to a dock on the New Jersey side thereof, the part of the compact relating to the question of jurisdiction in that case is the fourth article, which gave to New York "exclusive jurisdiction of and over the waters of Kill von Kull between Staten Island and New Jersey to the westernmost end of Shooter's Island *in respect to such quarantine laws and laws relating to passengers,* as now exist or may hereafter be passed under the authority of that state and for executing the same." This, it will be noticed, confers a limited jurisdiction for certain purposes entirely different from the *exclusive jurisdiction* conceded to New York in the second and third articles; the general jurisdiction over Kill von Kull being in New Jersey. The decision, therefore, in the De Voe case is not relevant to the present discussion.

In the case of *The Sarah E. Kennedy* it was held that a vessel at anchor west of the middle of the Hudson river was within the admiralty jurisdiction of the United States District Court for the District

of New Jersey because it was within the territorial limits of that state. The question of jurisdiction as between the states of New York and New Jersey was not in issue. Judge Nixon evidently followed the De Voe case without noticing that it construed a different part of the compact than that which related to the Hudson river, or else was of opinion that jurisdiction of the federal courts was limited by the geographical boundaries of the states and not affected by any agreement between the states as to their respective jurisdiction on either side of the line. 25 Fed. Rep., 571.

In the more recent case of *Ferguson* v. *Ross, et al.*, 126 N. Y., 459, decided in 1891, it was held that "while by the compact made in 1833 between the states of New York and New Jersey, the middle of the North river is declared to be the boundary between the two states, yet, as by Article III, exclusive jurisdiction of and over all waters of the bay of New York and of the Hudson river within certain limits is given to the state of New York, that state has jurisdiction to pass a law subjecting persons to liability for certain acts done in the waters embraced in those limits, although within the boundaries of New Jersey as so fixed."

In the *Ferguson* case an action had been brought by a shore inspector under the provisions of a statute passed by New York to recover a penalty for depositing dredgings from a slip in the city of New York in the waters of the Hudson river, contrary to the 8th section of the act referred to. The court said:

"It was not controverted that the defendants had discharged into the waters of the river opposite the city of New York on the New Jersey side at a point about one-fourth of a mile from the New York shore a scow load of material dredged from a slip in the city of New York in violation of the act. It was insisted, however, in the first place, that the deposit having been made within the territorial limits of the state of New Jersey, the state of New York had no jurisdiction to enact a law subjecting persons to liability for any act done within the territory of that state. The case of *People* v. *C. R. R. Company of New Jersey*, 42 N. Y., 283, furnishes a satisfactory answer to this objection. By the compact entered into between New York and New Jersey in 1833 the particulars of which are set forth in the opinion in that case the middle of the North river was declared to be the boundary between the two states; but *by the third article exclusive jurisdiction of and over all the waters of the bay of New York and of the Hudson river lying west of Manhattan Island and south of the Spuyten Duyvil creek and of and over the lands covered by said waters to low water mark on the New Jersey side thereof was ceded to the state of New York,* reserving to the state of New Jersey jurisdiction of wharves, docks and piers on the New Jersey side. The purpose of vesting exclusive jurisdiction over these waters in the state of New York was to promote the interests of commerce and navigation which would as supposed, be best subserved by giving to this state [New York] the exclusive control and regulation of the bay and harbor of New York." 462-3.

None of the opinions in these cases, however, deals with the question as to the power of New Jersey to tax land under the waters of the Hudson river and New York bay, and it does not appear that the question of the effect of the compact in this particular has heretofore been decided.

V.

THE COMPACT DID NOT GIVE OR CONCEDE TO NEW JERSEY POWER TO LEVY TAXES ON LAND UNDER THE WATERS OF THE HUDSON RIVER AND NEW YORK BAY SOUTH OF SPUYTEN DUYVIL CREEK.

We think it may safely be assumed that the power to levy taxes can only be exercised by a government having jurisdiction over the property assessed. Exclusive jurisdiction for all purposes of government may not be necessary; *but it cannot be maintained that a qualified power to regulate fisheries in the waters covering the property of the plaintiff in error, (which is all the jurisdiction that New Jersey has over it) involves the power to tax it.*

In the recent case of *Louisville and Jeffersonville Ferry Company* v. *Kentucky*, 188 U. S., 385, 396, it was held that political jurisdiction is a necessary condition of the right to impose taxation. In that case it appeared that Kentucky had asserted authority to tax property which had its *situs* in Indiana. The court said "while the mode, form and extent of taxation are, speaking generally, limited only by the wisdom of the legislature, that power is limited by a principle inhering in the very nature of constitu-

tional government; namely, that the taxation imposed must have relation to a subject within the *jurisdiction* of the taxing government. Hence, this court, speaking by Chief Justice Marshall in *McCulloch* v. *Maryland,* 4 Wheat., 316, 429, said that 'while all subjects over which the sovereign power of a state extends are objects of taxation, those over which it does not extend, are, upon the soundest principles, exempt from taxation.'" p. 396. Other authorities to the same effect are cited with approval in subsequent pages of the opinion. It cannot be necessary to cite additional authorities on this point; but different aspects of the matter have been discussed in the following cases: *Union Transit Co.* v. *Kentucky,* 199 U. S., 194; *D. L. & W. R. R. Co.,* v. *Penn.,* 198 U. S., 341; *Ops. Mass. Justices,* 1 Metc., 580; *U. S.* v. *Ames,* 1 Woodbridge & Minot, 76, 80; *Mitchell* v. *Tibbets,* 17 Pick., 298, and *U. S.* v. *Rice,* 4 Wheat., 246.

A proceeding by a state to tax property beyond its jurisdiction is an effort to take property without due process of law and in violation of the fourteenth amendment of the Constitution of the United States. In the Kentucky case referred to above this court said at page 398, referring to a franchise granted by the state of Indiana which it was found had its legal *situs* in that state: "It is not within the jurisdiction of Kentucky. The taxation of that franchise or incorporeal hereditament by Kentucky is, in our opinion, a deprivation by that state of the property of the Ferry Company without due process of law in violation of the fourteenth amendment of the Con-

stitution of the United States; as much so as if the state taxed real estate owned by that company in Indiana." The same opinion was expressed in the case of *D. L. & W. R. R. Co.* v. *Pennsylvania*, 198 U. S., 341; and in the case of *Union Transit Company* v. *Kentucky*, 199 U. S., 194, it was held that "the power of taxation is exercised upon the assumption of an equivalent rendered in the protection of the property and person of the tax-payer, and if such equivalent cannot possibly be rendered because the property taxed is wholly *beyond the jurisdiction of the taxing power* the taxation thereof within the domicil of the owner amounts to a taking of property without due process of law."

VI.

MEANING OF THE WORD "JURISDICTION" AS USED IN THE COMPACT.

The statement in the opinion under review that the jurisdiction of New York is "juridical" and not sovereign is in direct conflict with the emphatic language of the compact itself, which gives or concedes "exclusive jurisdiction" to New York, and emphasizes that expression by specifying a few minor particulars in which New Jersey may exercise jurisdiction below low-water mark, none of which involves the power to tax, and none of those exceptions to the exclusive jurisdiction of New York applies to the property of the plaintiff in error *except the authority to regulate fisheries*, there being no docks or other improvements on the property.

There is nothing in the compact to justify the inference that the word "jurisdiction" was not used in its broad common sense. The sense in which the word was used in the compact is illustrated by the sense in which it was used in the preceding controversy. New Jersey never claimed jurisdiction over the land under water prior to 1806. In that year an act was passed alleging that New Jersey "was invested with full right and lawful authority to exercise *jurisdiction* in and over the Hudson river and the main sea and all ports, harbors and havens lying adjacent to and along the New Jersey shore and coast, *in such a manner as belongs to a sovereign and independent state to use and exercise.*" *Bloomfield's New Jersey Laws*, p. 174. In the following year another act was passed by the legislature of New Jersey "to preserve and support the jurisdiction of this state." By that act it was declared that the easterly boundary of Bergen county (which was the only county in New Jersey then lying along the Hudson river and New York bay) was the middle of the waters adjoining the same, and denouncing severe penalties against any person who should attempt to execute legal process within that territory. *Bloomfield's Laws*, p. 177. These assertions of jurisdiction were very emphatically denied by the legislature of New York in a statute passed April 6, 1808. The preamble of that act recited the statute passed by New Jersey in 1806, the claim made thereby, proceedings to adjust the controversy by agreement, the failure thereof and the report to the legislature of New York and further recited that the said "legislature having duly considered the said report and

thereupon adjudged it advisable for the preservation and maintenance of such *jurisdiction* over the said property consisting of said river, islands and bay above specified, to make such provisions as are hereinafter contained," and thereupon it was enacted "that it shall be and hereby is declared to be the duty of the person administering the government of this state for the time being and all subordinate officers according to their respective powers, authorities and functions and by all lawful ways and means to preserve, maintain and defend the *jurisdiction* of this state in and over the said territory until this state shall be evicted thereof by due course of law * * * That if any person shall, within the said territory, oppose, disturb or hinder any public officer of this state in the execution of his office or do any other unlawful act as under the authority of the state of New Jersey or by colour or pretext that the place where such act was done was not within the *jurisdiction* of this state, any person so offending shall be deemed guilty of a high crime and misdemeanor against this state," &c.

The act further provided "that the whole of the said Hudson river southward of the northern boundary of the city of New York and the whole of the said bay between Staten Island and Long or Nassau Island shall so far forth be deemed to be within the *jurisdiction* of the city and county of New York as that all offences against this act shall be cognizable in the courts held in and for the said city and county. And further it is hereby declared that the courts of oyer and terminer and general sessions of the peace held in and for said city and county shall have cognizance of said offences." Record, p. 63-4.

It is perfectly clear that New Jersey did not obtain jurisdiction or sovereignty by the compact sufficient to levy taxes on the land under the waters of the bay. The inference that the change in the boundary line conferred such jurisdiction *ipso facto* is rejected by the fact that the very agreement by which the boundary line was relocated concedes *exclusive jurisdiction* to New York over the land and water between the old and new boundary lines. The title of the act of the legislature of New York authorizing the appointment of commissioners to negotiate the compact is "An act concerning the territorial limits and *jurisdiction* of the state of New York and the state of New Jersey." In the first section of the act the commissioners, when appointed, are authorized to "negotiate and agree respecting the territorial limits and *jurisdiction* of the state of New York and the state of New Jersey," and in the second section of the act it was provided that the commissioners should "have full power and authority to agree upon, settle and determine the limits and *jurisdiction* of the said states." "Record, p. 76. The New Jersey statute passed for the same purpose is almost identical in language. Record, p. 77. The word "jurisdiction" in both statutes and in the compact itself was not used in any qualified or restricted sense. It was used with the same meaning as in the preceding discussion. If it had not been so used, part of the object which the states desired to attain was not accomplished by the agreement. The meaning of the word is not uncertain or obscure. It is the word commonly used to confer or transfer sovereign gov-

ernmental power. It is defined in the Standard Dictionary as follows: "Lawful power or right to exercise official authority, whether *executive, legislative or judicial.*" The Century Dictionary gives a similar definition: "Controlling authority; the right of making and enforcing laws or regulations; the capacity of determining rules of action or use, and exacting penalties, as the jurisdiction of the state over its subjects."

That the word "jurisdiction" was not used in the compact in the sense of authority to exercise judicial power only is obvious from the sixth and seventh articles which expressly provide for the service of civil and criminal process in judicial proceedings. The word is often used—we think always in the same sense—in the numerous statutes passed by the various states ceding jurisdiction to the federal government over sites for forts, lighthouses, post offices, armories, etc. The legislature of New Jersey has passed several such acts—one in 1846, entitled "an act to vest in the United States of America jurisdiction over Sandy Hook." Laws of 1846, p. 124. Another was passed in 1872, Laws, p. 87, giving consent of the state to the purchase by the United States of certain lands as a site for a public building at Trenton, and ceding jurisdiction over the same. These are but specimens of numerous statutes to the same effect passed by the legislature of New Jersey and perhaps by the legislatures of all the states in the Union. Undoubtedly it was believed that governmental authority for all purposes would pass by the word jurisdiction from the states to the federal government except for the pro-

visos or reservations that often appear in such statutes.

The 17th paragraph of Section 8 of Article I, of the Constitution of the United States confers on Congress power "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten square miles) as may by session of particular states and the acceptance of Congress become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which they may be for the erection of forts, magazines, arsenals, dock-yards and other needful buildings." The expression "exclusive legislation" used in the above paragraph has been held to be synonymous with exclusive jurisdiction, *United States* v. *Cornell*, 2 Mason, 60, 64, 91, the case being twice reported, Justice Story writing both opinions. In that case it appeared that a man had been indicted for a crime committed in Fort Adams, Rhode Island, the fort being located on a tract of land that had been conveyed to the government of the United States, with the consent of the legislature of Rhode Island. The act giving consent, contained a proviso that all civil and criminal process, under the authority of the state or any officer thereof, might be executed in the lands so ceded, and the fortifications thereon, in the same manner as if the land had not been ceded. Notwithstanding this proviso, the court held that the crime committed in the fort was an offense against the laws of the United States and not against the state of Rhode Island. The court, referring to the

site, said: "The land so purchased, by the very terms of the Constitution *ipso facto,* fell within the exclusive legislation of Congress and jurisdiction of the state was completely ousted."

A similar decision was rendered by the Supreme Court of Massachusetts in a case on indictment for selling liquor upon land belonging to the United States at Springfield, and used as an armory. 8 Mass., p. 72. And again in the case of *Loughborough* v. *Blake,* 5 Wheaton, 317, it was held, Chief Justice Marshall writing the opinion, that the power of Congress to exercise exclusive jurisdiction in the District of Columbia includes the power of taxing. He used the expression "exclusive jurisdiction" as synonymous with exclusive legislation.

It is difficult to see how the abandonment, acknowledgment, or cession of jurisdiction by New Jersey to New York by solemn treaty differs (except in degree of solemnity) from many acts of our state legislatures consenting to the purchase of sites for post offices, forts and lighthouses by the Federal Government, and the cession of jurisdiction over the same. Yet no one would insist that such lands, so ceded to the United States are subject to local taxation by the states.

The New Jersey courts entirely ignored the fact, (which we think significant), that New Jersey never had and never exercised jurisdiction or sovereignty over the land in question prior to the year 1833 when the compact was made, and that New York not only asserted, but in fact exercised, jurisdiction over it for a hundred and seventy years before. The re-

stricted meaning ascribed by the New Jersey courts to the word "jurisdiction" as used in the compact, if correct, left an important element in the controversy unsettled. The dispute that had prevailed prior to 1833 related chiefly to the right to exercise political jurisdiction; that is, *the functions of government* over the water and the land under water, and not merely to the ownership of the land or to the exercise of judical power over it. This seems to be plainly indicated by the statutes of 1806, 1807 and 1808, to which reference has been made.

As a further illustration of the sense in which the word "jurisdiction" was used in the compact, we beg to call attention to the fact that the word in the third article is evidently synonymous with the same word in the second article relating to Bedloe's and Ellis' Islands and other islands lying in the vaters of the river and bay. No one has ever heretofore insisted that New Jersey has had any jurisdiction for any purpose over those islands since the compact was made.

Perhaps a view of the true meaning of the compact may be obtained more easily by laying aside for a moment the various interpretations of diferent parts of it since 1833, and then read it in the language in which it is written, giving to the word "jurisdiction" the meaning with which that word was used in the discussion between the states prior to 1833, and in the statutes that led to the appointment of the commissioners who negotiated and signed the agreement. This seems to be not only proper, but

necessary, in order that the compact may be a fitting termination of the controversy and that the avowed object of both states may be fully attained.

VII.

CONCLUSION.

We therefore respectfully submit:

(1) That prior to the execution of the compact New Jersey did not have jurisdiction for any purpose over the land under the waters of Hudson river and New York bay and has no jurisdiction now below low-water mark of the river and bay or over the property of the plaintiff in error except that conferred by the compact.

(2) That by the compact exclusive jurisdiction was granted or conceded to New York over the land of the plaintiff in error, subject only to the right of New Jersey to regulate fisheries in the waters covering the same, provided navigation be not obstructed. We admit that if any docks, wharves or improvements had been made on the property they would be subject to taxation by New Jersey and (in this instance) as part of the upland. There are, however, no improvements on the property.

(3) That authority to regulate fisheries in the waters covering the property of the plaintiff in error does not involve the power to tax it.

(4) That the word "jurisdiction" is used in the compact in its broad common sense; that is, the power to govern—to exercise executive, legislative and judical authority. We think the word was not used for the limited purpose of conferring merely judicial authority or the right to exercise partial or indefinite police power. The term "exclusive jurisdiction" is repeatedly used, and whenever qualified the exceptions are specified as definitely as possible.

(5) That taxation cannot be imposed except by authority of a government having jurisdiction over the property assessed broad enough to include the power to tax.

(6) That New Jersey does not possess the power to tax the property of the plaintiff in error. That state has no jurisdiction below the low-water mark on its shore over Hudson river and New York bay south of Spuyten Duyvil creek except over wharves, docks and improvements made and to be made thereon and over vessels aground thereon or fastened to any dock or wharf, and the right to regulate fisheries; but even this measure of jurisdiction is diminished by the provision that such vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the state of New York, and the right to regulate fisheries can not be exercised so as to hinder or obstruct navigation.

(7) That the judgment under review should be reversed.

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We add two appendices: One being a review of the decisions of the courts of New Jersey relating to taxation of property along its northeasterly shore showing that the question involved in this case has never been decided; and the other being an examination of the statutory and historical material relating to the boundary between New York and New Jersey and to the jurisdiction over the Hudson river and New York bay from 1664 when New Jersey became a separate province to 1833 when the compact was made showing (1) that the boundary between the colonies and subsequent states was the easterly shore of New Jersey, and (2) that New York asserted and in fact exercised jurisdiction to the New Jersey shore during that period and rightfully so according to the decisions in *Corfield* v. *Coryell,* 4 Wash. C. C. R., 371; *Handly's, Lessee* v. *Anthony,* 5 Wheat., 374, and *Henderson Bridge Company* v. *Henderson City,* 173 U. S., 592, 609-613.

At the end of the second appendix authorities are cited as to the effect of the Revolution of 1776-1783, on the location of the boundary line.

Appendix I.

CASES IN WHICH THE RIGHT TO ASSESS PROPERTY UNDER TIDE WATER OF THE HUDSON RIVER AND NEW YORK BAY HAS BEEN CONSIDERED.

(1) *The State, Coles, et al., prosecutors,* v. *Jersey City,* 24 N. J. Law 108 (Sup. Ct.). In this case it appeared that a large tract of land in Jersey City had been taxed as "the estate of J. B. Coles." The testimony showed that part of the land was below low water mark. It was insisted that the part situated below high-water mark was not taxable because it belonged to the state. The court said that the land was susceptible of private ownership, and might have been granted by the state to Coles, and the evidence indicated that such conveyance had been made. The question of the right to tax so much of the land as lay below low-water mark in view of the compact of 1833 between New York and New Jersey was not mentioned in the litigation.

(2) *The State, Roberts, et al., prosecutors,* v. *Jersey City,* 25 N. J. Law, 525 (Sup. Ct.) The land taxed in this case had been part of the Coles estate, and was a strip five feet wide adjoining the water. It was laid out in lots and part of the land was below low-water mark. No part of the property included in the assessment that lay below high-water mark had been granted by the state nor had the prosecutors, or those under whom they claimed title, obtained any license to wharf out or otherwise improve the same. It was, however, admitted that the upland, that is,

the five foot strip, was worth the amount of the valuation put upon the entire land—$87,500. The court sustained the assessment, but said that if the land below high-water mark had been assessed separately the assessment must have been set aside. The land under water was assessed separately in the present instance. Record, pp. 6-9.

(3) *The State, Bentley, et al., prosecutors,* v. *Jersey City,* 25 N. J. L., 530 (Sup. Ct.). This case was argued with the Roberts case, and differed from that case in that part of the land below high-water mark had been conveyed to one Budd, who was the grantor of the prosecutors 42 N. J. L., 351, and the prosecutors had obtained a license to wharf out certain limits. The court held that the property was rightly assessed so far as the grant extended. The question of the effect of the compact of 1833 was not raised. The opinion is a mere memorandum.

(4) *The State, Morris Canal & Banking Company, prosecutor,* v. *Jersey City,* 35 N. J. L., 178 (Sup. Ct.). In this case a tract of land containing about 42¼ acres was granted by the state by a special act passed in 1867 (Laws of 1867, p. 251). The land was not within the shore lines of the Hudson river or New York bay. It constituted part of a dock, and consequently, under the terms of the compact of 1833, was subject to the jurisdiction of New Jersey. The principal contention in the case was that the grant from the state was a lease and not a conveyance, and consequently the company, as tenant, was not obliged to pay taxes on the property. The tax was affirmed.

This case was taken to the Court of Errors (36 N. J. L., 471), where it was held that the company was taxable for the property, notwithstanding the peculiar language of the grant. It appeared that ten and four-tenths acres of upland and twenty-two and thirty-eight hundredths acres of land under water had been assessed at $17,500 per acre, making $525,000 in all. The court followed the case of the *State* v. *Jersey City,* 25 N. J. Law, 525, *supra,* held that the ten acres of upland and the right to reclaim the balance were worth $525,000, and affirmed the tax. The compact of 1833 was not mentioned in the case. This decision was reversed by the Court of Errors (43 N. J. Law, 632), for the reason that the company did not own the land under water, and the court would not assume that the value of the ten and four-tenths acres of upland was $525,000, although it was said that the adjacency of the ten acres to the water was a circumstance to be taken into account in assessing its value. The matter was referred to a Supreme Court commissioner to ascertain and report a correct valuation, and it came again before the Supreme Court (46 N. J. Law, 67) on exceptions to the report of the commissioner. The commissioner in estimating the value of the property had taken into account the right of the owner of the upland to reclaim the lowland and build piers thereon. The court said that the commissioner was right in adding the value of "the pier right" to the value of the upland. The agreement of 1833 was not referred to.

(5) The question was also considered in *State (Winants, Pros.)* v. *Jersey City,* 32 N. J. Law, 349; but the decision is not important at present.

(6) *State* v. *Yard,* 43 N. J. Law, 121. In that case it was held that an owner of ten acres of upland who claimed a right to re-claim twenty acres of land under water in the Hudson river fronting the upland, could be assessed "for thirty acres" of land at so much per acre, unless it appeared that the upland was not worth the aggregate amount assessed against the whole thirty acres. In the present case the value of the upland and of land under water was estimated separately.

We do not find any other case reported in New Jersey in which the question arose as to the right of the State or any of its municipalities to assess land under the waters of the Hudson river or New York bay. It does not appear that the compact was considered in any of the cases.

Appendix II.

THE HISTORY OF THE CONTROVERSY PRIOR TO 1833.

It is proper to examine and construe the compact of 1833 by the light of the history of the preceding controversy (*M. & O. Rd. Co.* v. *Tennessee,* 153 U. S., 489, 502), and if it is true that New Jersey did not have the right to exercise jurisdiction over the land in question prior to 1833, that fact must exert an important influence in construing the compact, because in that case unless a GRANT OF JURISDICTION TO NEW JERSEY can be found in the compact, the state does not possess it. It is the object of the following examination of ancient documents, statutes, and official proceedings to show that, prior to 1833, New Jersey did not possess nor in fact exercise jurisdiction east of low water mark from the forty-first degree of north latitude to Raritan bay.

(We beg to remind the Court that prior to 1753 the calendar year began on March 25th).

In March 1663-4, Charles II granted to his brother, the Duke of York, a large part of North America. The description in the grant is indefinite, but seems to include a large part of what is now Canada, New England, New York and certainly all of New Jersey. Record, p. 18. It is stated in the grant that the southwest boundary of New Jersey is "the east side of Delaware bay." In June, 1664 the Duke of York granted New Jersey to Berkeley and Carteret by the following description:

> "All that tract of land adjacent to New England and lying and being to the westward of Long island and Manhattan island, and bounded on the east by the main sea and part of Hudson's river, and hath upon the west Delaware bay, and to the northward as far as the northermost branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crosses over thence in a straight line to Hudson's river in forty-one degrees of latitude." Record, p. 19.

This description does not include any land under water nor jurisdiction over such land. As to Delaware bay, it has been so adjudged. *Corfield* v. *Coryell,* 4 Wash., C. C. R., 371, cited and approved in *State* v. *Davis,* 25 N. J. Law, 387. See also *Handly's Lessee* v. *Anthony,* 5 Wheat., 374.

(In this brief we will use modern spelling and capitalization in quoting).

James, Duke of York, was the sovereign of the territory on both sides of the Hudson river at the time he made the grant to Berkeley and Carteret, and therefore as New Jersey was *bounded* on the east in the grant by navigable water, nothing passed below high water mark. (*Shively* v. *Bowlby,* 152 U. S., 1, 13; *Martin* v. *Waddell,* 16 Petrs., 345; *Henderson Bridge Co.* v. *Henderson City,* 173 U. S., 592, 612).

In the year 1665 Colonel Nicholls, at that time Governor of New York, wrote a letter to the Duke of York, in which he stated that Captain Bollen had recently shown him a letter from Berkeley and Carteret, and therewith a grant from the Duke of York

to them "for all the lands to the *west* of the Hudson's river, as more fully may appear in said grant." Nichols in his letter clearly intimates that he thought the grant was very prejudicial to the Duke and that he had been deceived by those who had persuaded him to make it. Record, p. 20.

In February, 1665, within a year after the grant was made, Philip Carteret was appointed Governor of New Jersey, and in his commission the territory was described exactly as in the grant made by the Duke of York to Berkeley and Carteret. On the same day that Carteret was appointed governor, instructions were issued to him in which the territory was again described in the same language as in the grant. Record, p. 21.

On December 23, 1667, Nicholls, then governor of New York, granted Great Oyster island, now Bedloe's island, to one Robert Needham, reciting in the grant:

> "Whereas, there is a certain island within this government lying and being in Hudson's river to the west of Long island, between Nutten island [now Governor's island] and the main, and about southwest from this fort, commonly called and known by the name of Great Oyster Island, It being the biggest of the three small islands which lie near or adjacent one to another, to which island there appears not to be any particular lawful owner, either natives or others, who have just title or do lay claim unto the same."

This grant to Needham is recorded in Book of Patents in the office of the New York secretary of state, Vol. 2, p. 146. The day after the grant was made to Needham he assigned all his interest therein to Isaac Bedlow. The assignment is endorsed on the grant and recorded with it. Record, p. 22. The importance of this grant lies in the fact that Bedloe's island is west of the center line of New York bay, and of course would have passed to Berkeley and Carteret if their grant had extended to that line.

A few years later, some time between 1670 and 1680, Edmund Andros, then governor of New York, granted Little Oyster island to Captain William Dyre, the grant, dated 167—, reciting:

> "Whereas, there is a certain small island commonly called Little Oyster island, lying westward of this island and city of New York, and northeast from Great Oyster island or Lone island OVER AGAINST COMMUNIPAW, the which hath certified unto me not to belong to any particular person, and Captain William Dyre having requested my grant of the said island unto him to make some improvement thereon, know ye, that by virtue of the commission and authority unto me given by his royal highness, I have given and granted, and by these presents do give and grant unto Captain William Dyre, his heirs and assigns, the afore-recited island, with all and singular the appurtenances." Record, p. 22.

This grant is recorded in the office of the N. Y. secretary of state in book of patents, vol. 4, p. 115. The island lies west of the middle of the bay.

In September, 1668, Governor Carteret of New Jersey granted a charter to the town and freeholders of Bergen, in which he described the limits and jurisdiction of the town as follows:

> "To begin at Mordanis meadow, lying upon the west side of Hudson's river, thence to run up a northwest line * * * to a place called Espatin," and thence by various inland courses "till it comes to the point or neck of land that is over against Staten island and Shooter's island, in Arthur Kull bay, containing in length about twelve miles, from thence to run eastward ALONG the river called Kill von Kull that parts Staten island from the main to a point or neck of land called Constable's Hook, and from thence to run up northward all ALONG the bay up unto Hudson's river till it comes to Mordanis meadow aforesaid."

The charter then goes on to give the boundaries of the town as follows:

> "At the north end by a tract of land belonging to Captain Nicholas Berlett and Mr. Samuel Edsall; on the east side by Hudson's river, on the south end by the Kill von Kull, that parts Staten island and the main, and on the west by Arthur Kull bay and Hackensack river." Record, p. 23.

The territory described in the charter DOES NOT INCLUDE ANY LAND UNDER WATER.

On the 25th of August, 1668, Samuel Mavericke, writing to Lord Arlington from New York referred to the grant of New Jersey to Berkeley and Carteret, and said that it had "proved very prejudicial to this place [New York] and government." Referring to the boundaries of New Jersey he said: "Their bounds

reach from the east side of Delaware river to the WEST SIDE of Hudson's river, including a vast tract of the most improvable land within his royal highness' patent." Record, p. 24.

On June 29, 1674, Charles II made a second grant of New Jersey to the Duke of York, in which the territory was described as in the grant made ten years before. On July 29th, 1674, the Duke of York made a second grant of New Jersey to Berkeley and Carteret, in which he described the territory exactly as in the former grant. These grants were made because the Dutch captured New York in 1673 and restored the territory to the English in 1674. It was therefore thought to be necessary to renew the grants. (Whitehead, East Jersey, 73, 77.) Record, p. 25.

On July 1, 1676, a quintipartite deed was made by the grantees of the Duke of York and their co-tenants. That deed released and conveyed to Sir George Carteret, his heirs and assigns forever, all that easterly part, share or portion of the tract of land and premises conveyed by James, Duke of York, to Berkeley and Carteret.

> "Extending eastward and northward ALONG the sea coast and the said river called Hudson's river from the east side of a certain place or harbor lying on the southerly part of the same tract of land and commonly called or known in the map of the said tract of land by the name of Little Egg harbor, to that part of said river called Hudson's river, which is in forty-one degrees latitude, being the furthermost part of the said tract of land and premises which is bounded by the said river." Record, p. 26.

On the first of February, in the 34th year of the reign of Charles II (1682), Elizabeth, widow of Sir George Carteret, and others, granted or released their interest in the territory to William Penn and eleven others, and in the conveyance the land was described as in the quintipartite deed (Record, p. 26), and in the following year the Duke of York made a release to the twenty-four proprietors of any interest that he might have in New Jersey, in which the territory is referred to "as all that tract of land adjacent to New England in the parts of America lying and being to the westward of Long island and Manhattan island and BOUNDED on the southeast by the main sea, and EAST by Hudson river and hath on the west Delaware bay and river," etc. Record, p. 27.

In 1662 an act was passed by the Colonial legislature of New Jersey entitled "An act to divide the province into four counties." The act related only to East Jersey and divided that part of the colony into four counties, viz., Bergen, Essex, Middlesex and Monmouth. The act declared "Bergen county to contain all the settlements BETWEEN Hudson's river and Hackensack river, beginning at Constable's Hook, and so on to extend to the uppermost bound of the province northward between the said rivers." Record, p. 31. And in 1693 an act was passed for dividing each county into townships, and in dividing Bergen county the act provided that "in the county of Bergen the township of Hackensack shall include all the land BETWIXT Hackensack river and Hudson's river that extends from the corporation town bounds of Bergen to the partition line of the province, the

corporation town of Bergen being bounded according to their charter," being the charter referred to above. Record, p. 33.

In the year 1709 an act was passed by the legislature of New Jersey "for dividing and ascertaining the boundaries of all the counties in the province. That in the eastern division the county of Bergen shall begin at Constable's Hook, and so run up ALONG the bay and Hudson's river to the partition point of New Jersey and the province of New York," etc. (Genl. Stats. of N. J., p. 996, Record, p. 34.)

On January 8, 1713, Queen Anne granted a charter to the township of Bergen, evidently in confirmation of the charter granted by Governor Carteret in 1668. The queen's charter describes the boundaries of the township as follows:

> "Beginning at the north end of the said town from a place called Mordains meadow, lying upon the WEST SIDE of Hudson's river, and from thence to run [by the same description as in the former charter] to the point or neck of land that is over against Staten island and Shooter's island on Arthur Kull bay, containing in length about twelve miles, from thence eastward ALONG the river called Kill von Kull, that parts Staten island from the main, to a point or neck of land commonly called Constable's Hook, and thence to run up northward all ALONG the said bay up unto Hudson's river until it comes to Mordains meadows aforesaid." Record, p. 34.

It is interesting to notice that in the charter granted May 22, 1718 by King George to the principal inhabitants of Perth Amboy (Record, p. 37) the land

under the waters of Raritan bay over to the Staten island shore opposite to the city was included. The petition for the charter set forth that "Perth Amboy is not only the best situation for a place of trade in our said province of New Jersey, and has a harbor for shipping preferable to those in the provinces adjoining." It evidently was then the impression that navigable water and the land under the water contiguous to the harbor of a commercial city should be included within the municipality—a policy that was again expressed in the compact of 1833.

One of the most important documents throwing light upon the boundaries and political jurisdiction of New Jersey prior to 1833 is a letter written by Lewis Morris, president of the council of New Jersey to the lords of trade, to be found in N. J. Arch., Vol. 4, p. 439. It is dated "Perth Amboy, November 21, 1719," and is in reply to a letter from the lords of trade asking for the limits and boundaries of the Province of New Jersey. In reply Morris says:

> "It begins ON Hudson's river, in the latitude of forty-one degrees, and runs from thence in a direct line to the latitude of forty-one degrees and forty minutes on the northermost branch of the river Delaware, then it runs down following the course of the river Delaware to Cape May, which is on the northermost point on the mouth or entrance into that river, which there, and for many leagues up, loses the name of Delaware river, and is called Delaware bay. From Cape May it extends northward, along the sea to Sandy Hook, and from the northward of a great bay called Sandy Hook bay (into which the rivers of Hud-

son, Raritan, Hackensack and Passaic empty themselves), it extends ALONG the river Hudson to the latitude of forty-one first mentioned.

"It is bounded on the southeast by the sea, and on the east partly by the sea and partly by Hudson's river, which divides it from part of the Province of New York, on the northeast by the Province of New York; a direct line from the latitude of forty-one degrees, on Hudson's river, to the latitude of forty-one degrees and forty minutes on the Delaware being the line of partition between them; it is bounded on the south, southwest and west by the bay and river of Delaware, which divides it from the Province of Pennsylvania.

"The best voucher I know of for these boundaries is a grant from the late King James when Duke of York to my Lord Berkeley and Sir George Carteret, which I think is enrolled in chancery; if not, the Jersey Society can (I suppose) furnish your lordships with it, or, if your lordships think it necessary, I can get it taken out of the records here and transmit it to you." Record, p. 39.

Several other statutes passed by the legislature of New Jersey and other official proceedings taken prior to 1833, relative to the boundary line in question are to the same effect:

"An act appointing commissioners for finally settling and determining the several rights, titles and claims to the common lands of the township of Bergen; and for making a partition thereof, in just and equitable proportions, among those who shall be adjudged by the said commissioners to be entitled to the same." Laws of N. J., 1763, p. 66.

(The township of Bergen at that time included Jersey City and neighboring territory along Hudson river and New York bay.)

"An act for establishing the boundary or partition line between the colonies of New York and Nova Caesarea or New Jersey, and for confirming the titles and possessions." Passed September 26, 1772. Patterson's laws, p. 22.

"An act erecting the North Ward of Perth Amboy, and a part of the township of Woodbridge, in the county of Middlesex, into a city, and for incorporating the same by the name and title of 'The City of Perth Amboy.'" Passed December 21, 1784. Patterson's laws, p. 64.)

"An act to establish and confirm the charter, rights and privileges of the borough of Elizabeth." Passed November 28, 1789. (Patterson's laws, p. 94).

"An act to amend the charter granted for the incorporation of the freeholders, inhabitants of the township of Bergen." Laws of N. J., 1800-6, p. 679.

We have found nothing to indicate that New Jersey ever exercised jurisdiction or seriously claimed the right to exercise jurisdiction over the water or land under water east of the shore from the forty-first degree of north latitude to Raritan bay except opposite Perth Amboy prior to the beginning of the nineteenth century. It is true that there was a claim made that Staten Island was a part of New Jersey, for the reason, as alleged, that the Hudson river flowed into the sea east of the island and not by way of Staten Island Sound, but that claim and its merits are not relevant at present.

The history and official proceedings of the government of the colony, city and state of New York strongly confirm the statement that, prior to 1833, New Jersey did not possess or exercise jurisdiction over the water or over the land under water between the shore and the middle of the river and bay.

In the commission of Colonel Thomas Dongan as governor of New York, dated September 30th, 1662, the grant from Charles II to the Duke of York is referred to, and then the commission recites:

> "And whereas, I [Duke of York] have since for divers good causes and considerations by several instruments under my hand and seal bargained, sold, released and confirmed unto Sir George Carteret and his heirs (and others) and their heirs, all the tract of land commonly called or known by the names of east and west New Jesey, situate ON THE WEST SIDE of Hudson's river, according to certain boundaries more particularly expressed in the said several instruments," etc. Record, p. 30.

On the 1st of October, 1691, an act was passed by the colonial legislature of New York entitled "An act to divide the province and dependencies into shires and counties," reciting that:

> "Forasmuch as mistakes may arise about the limits and bounds of the respective counties within this province, for prevention whereof, be it enacted, etc., that the said province be divided into twelve counties, as follows: * * *
>
> "II. The city and county of New York to contain all the islands commonly called Manhattan's island, Manning's island, the two Barn islands,

and the three Oyster islands; Manhattan's island to be called the city of New York, and the rest of the islands, &c. * * *

"VIII. The county of Richmond to contain all of Staten island, Shooter's island, and the islands of Meadow on the west side thereof." Record, p. 32.

Probably the most significant document relating to the boundary line between New York and New Jersey is the Montgomerie charter granted in 1730 Record, p. 40. In this charter it is declared:

"That the said city of New York, and the compass, precincts, circuit, bounds, liberties and jurisdiction of the same, do reach, extend and stretch forth, and shall and may reach, extend, and stretch forth, as well in length as in breadth and circuit in and through the limits and boundaries following, to wit: To begin at the river, creek or run of water called Spuyten Duyvel, over which King's Bridge is built, where the said river or creek empties itself into the North river, on Westchester side thereof, at low-water mark, and so to run along the said river, creek or run, on Westchester side, at low-water mark, unto the East river or Sound, and from thence to cross over to Nassau island, to low-water mark there, including Great Barn island, Little Barn island and Manning's island, and from thence all along Nassau island shore, at low-water mark, unto the south side of the Red Hook; and from thence TO RUN A LINE ACROSS THE NORTH RIVER SO AS TO INCLUDE NUTTEN ISLAND, BEDLOW'S ISLAND, BUCKING ISLAND, AND THE OYSTER ISLANDS, TO LOW-WATER MARK ON THE WEST SIDE OF THE NORTH RIVER, or so far as the limits of our said province extend there, and so to run up along the

west side of the said river at low-water mark, or along the limits of our said province, until it comes directly opposite to the first mentioned river or creek, and thence to the place where the said boundaries first began."

The expression, "or so far as the limits of our said province extend there" is often repeated in descriptions of the line, BUT NOT ALWAYS.

The charter then proceeds to divide the territory so described into wards.

"The south ward to begin at the middle of Wall street, where the line of the west ward runs across the same, and from thence down the middle of Wall street, until it comes directly opposite to the middle of the north end of Broad street; and from thence down the middle of Broad street to the long bridge; and from thence to the eastward of and to include the said long bridge, and the market house at the south end of the said street; and from thence to continue and run a southeast line across the East river to low-water mark, on Nassau island shore; and from thence to run along the said shore at low-water mark to the south side of Red Hook, and from thence TO RUN A LINE ACROSS THE NORTH RIVER SO AS TO INCLUDE NUTTEN ISLAND, BEDLOW'S ISLAND, BUCKING ISLAND, AND THE OYSTER ISLANDS, TO LOW-WATER MARK ON THE NORTH RIVER; AND SO TO RUN UP ALONG THE WEST SIDE OF THE SAID RIVER AT LOW-WATER MARK UNTIL IT COMES DIRECTLY OPPOSITE BESTAVER'S KILLITIE OR RIVULET; and from thence to run to the northwesterly corner of the west ward, at four hundred feet beyond low-water mark; and from thence along the bounds of the said west ward till it comes to the southwesterly end thereof; and from thence still along the

bounds of the west ward, through the street by the parade, and through Beaver street and New street, to the place where the south ward began."

The description of the out ward in the Montgomerie charter is still more significant.

"The out ward to begin at the northwesterly corner of the south ward, AT LOW-WATER MARK, ON THE WEST SIDE OF THE North river, over against Bestaver's killitie or rivulet, and from thence to run up along THE WEST SIDE OF THE SAID RIVER AT LOW-WATER MARK, until it comes directly opposite to the river, creek or run of water called Spuyten Duyvel, over which King's Bridge is built, and from thence to run up the said creek or river to the Westchester side thereof, at low-water mark, and so to run along the said river, creek or run, on Westchester side, at low-water mark into the East river or Sound and from thence to cross over to Nassau island, to low-water mark there, including Great Barn island, Little Barn island and Manning's island," etc.

On the 14th of October, 1732, an act was passed by the legislature of New York entitled "An act for confirming unto the city of New York its rights and privileges." The second section of the act recites:

"That all and singular letters patent, grants, charters, and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the mayor, aldermen and commonalty of the city of New York be, and are hereby declared to be, and shall be good, valid, perfect, authentic, and effectual in the law, and shall stand, be taken, reputed, deemed and adjudged, good, perfect, sure, available, authentic and ef-

fectual in the law, against the King's Majesty, his heirs and successors, and all and every person and persons whomsoever, according to the tenor and effect of the said letters patent, grants, charters and gifts."

The third section of the act recites:

"That all and singular letters patent, grants, charters and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the mayor, aldermen and commonalty of the city of New York, be and are, to all intents and purposes, hereby ratified and confirmed." Record, p. 44.

On the 7th, of March, 1788, an act was passed by the legislature of New York entitled "An act for dividing the state into counties." The section defining the boundaries of the county of New York is as follows:

"II. And be it further enacted by the authority aforesaid, that the bounds and limits of the said several counties shall be as follows:—

"The county of New York to contain the islands called Manhattan's island, Great Barn island, Little Barn island, Manning's island, Nutten island, Bedlow's island, Bucking island and the Oyster islands, and all the land under the water within the following bounds: Beginning at Spuyten Duyvel creek, where the same empties itself into Hudson's river, on the Westchester side thereof, at low-water mark, where the same now is or hereafter may be, and so running along the said creek, at low-water mark as aforesaid, on the Westchester side thereof, unto the East river, or Sound, and from thence to cross over to Nassau island to low-water mark as aforesaid, unto

> the south side of Red Hook, and from thence across the North river, so as to include Nutten island, Bedlow's island, Bucking island, and the Oyster islands, to low-water mark on the west side of Hudson's river, or so far as the bounds of this state extend there, and so up along the west side of Hudson's river, at low-water mark, or along the limits of this state until it comes directly opposite the first mentioned creek, and thence to the place where the said boundaries first began." Record, p. 53.

On February 28, 1791, an act was passed to alter the wards in the city of New York, whereby the city was divided into seven wards. The description of the first ward was similar to the description of the south ward in the Montgomerie charter, one of the lines extending from Red Hook across North river "so as to include Nutten's island, Bedlow's island, Bucking island and the Oyster islands to low-water mark on the west side of Hudson's river, or so far as the bounds of the state extend there, and so up along the west side of Hudson's river at low-water mark or along the limits of this state to a place due west from the middle of the west end of Little Queen street," etc., to the place of beginning.

The fourth ward also extended over "across Hudson's river to low-water mark on the west side thereof, or so far as the bounds of this state extend there, and so down along the west side of Hudson's river at low-water mark, or along the limits of this state, to the bounds of the first ward," etc. Record, p. 55.

Information of some importance on the question may also be found in an ordinance passed by the common council of the city of New York, April 20th, 1795. Record, p. 57. The minutes recite: "That it being represented to the board that certain persons had set up fuyck fences in the river below low-water mark on the south side of Paulus Hook on the Jersey shore, to the obstruction of drawing seines for the taking of fish," whereupon an ordinance was passed by the board entitled "A law to prevent the setting of fences or other obstructions in the rivers within the limits and JURISDICTION of the city of New York." The ordinance declares that "no person shall set or place any fence or stake or any other thing whatsoever in any part of the rivers or bays within the limits and JURISDICTION of the said city, by which the navigation of the said rivers or bays, or the casting or drawing of seines or nets for the taking of fish could be interrupted or obstructed," and prescribes a penalty of eight pounds for each violation, and that it shall be lawful for any person to take up and remove any such fence or stake or other thing which may at any time be found set or placed contrary to the ordinance. At the same meeting it was ordered that William Sloo, who it appears was employed by the board to take fish for the use of the alms house, "do cause to be taken up and removed all fences, stakes or other things that may or shall be set in the river in the manner aforesaid, and which may or shall obstruct or interrupt him in casting or drawing his seines as aforesaid."

In the pamphlet laws of N. Y., for the year 1800, p. 7. (Record, p. 57), there is an act entitled "An act to cede to the United States the jurisdiction of certain islands situate in and about the Harbor of New York." The act recites that "all that certain island called Bedlow's island, bounded on all sides by the waters of the Hudson river; all that certain island called Oyster island (bounded as aforesaid) and all that certain island called Governor's island on which Fort Jay is situated (bounded as aforesaid), shall hereafter be subject to the jurisdiction of the United States," reserving to the state of New York the right to execute any process, civil or criminal therein. Bedlow's island and the Oyster islands are west of the center of the bay of New York.

And again in 1803 another act was passed to increase the number of wards in the city of New York and to equalize the same (Record, p. 58) in which the wards on the westerly side of the city are described as in the Montgomerie Charter and act of 1791 above mentioned.

A similar act was passed in 1813 entitled "An act to reduce several laws relating particularly to the city of New York into one act." That act describes the ten wards of the city, the westerly wards extending across the Hudson river as in the Montgomerie Charter and other statutes referred to above. Record, p. 66.

In 1825 an act was passed entitled "An act to equalize and increase the number of wards in the city of New York (Laws of N. Y., Vol. 10, p. 286),

in which the westerly wards were described as stated above. Record, p. 68.

In 1829 an act was passed by the legislature of New York entitled "An act concerning the territorial limits and divisions, the civil polity, and the internal administration of this state." Record, p. 72. In Chapter 1, title 1 of that act the boundaries of the state are described. The line starts at Lyon's Point in the mouth of Byram's river, where it empties into Long Island Sound, and runs thence up along the river and along the boundaries of Connecticut, Massachusetts and Vermont to the St. Lawrence river; thence westerly and southerly along the British Dominion, through Lake Erie and Ontario to the boundary line of Pennsylvania; thence easterly along said line to the Delaware river; thence down said river "to the termination on the east bank of the Delaware river of a line run in the year 1774 by Wm. Wickham and Samuel Gale, commissioners on the part of the then colony of New York, and John Stevens and Walter Rutherford, commissioners on the part of the then colony of New Jersey, thence along said line to a rock ON THE WEST SIDE OF HUDSON'S RIVER in latitude of 41 degrees north marked by said commission, and thence southerly ALONG THE WEST SHORE at low-water mark of Hudson's river, of the Kill von Kull, of the sound between Staten island and New Jersey and of Raritan bay to Sandy Hook, and thence to the place of beginning in such manner as to include Staten island and the islands of Meadow on the west side thereof, Shooter's island, Long island, Gardiner's island," etc.

In title 2, chapter 1, of the act, it is declared that "the sovereignty and jurisdiction of this state shall extend to all the places within the boundaries hereof as declared in the preceding title, but the extent of such jurisdiction over places that have been or may be ceded to the United States shall be qualified by the terms of such cession."

In 1829 another act was passed dividing the city of New York into fourteen wards (Record, p. 73) in which the westerly wards of the city were described as in the Montgomerie Charter and the statutes referred to above.

Several other statutes were passed prior to 1833 changing the boundaries of the wards and increasing the number of wards in New York. They all describe the westerly wards of the city as in the statutes from which we have quoted. Record, pp. 62-70.

A careful examination of the foregoing statutes, charters, etc., leads to the conclusion that prior to the year 1833, New Jersey did not have the legal right to exercise jurisdiction over the water or the land under water between her shore and the middle of the Hudson river and New York bay. It is probably true that owners of riparian land in New Jersey built docks and wharves along their property and fished in the waters of the river and bay and used the same for the purpose of navigation; but we find no evidence to show any official act on the part of New Jersey exercising jurisdiction over the water or land under water of the river and bay, nor any assertion of a right to do so, prior to the year 1833, with a single exception, which will be referred to below.

The information above referred to no doubt contains the basis of the remark in the opinion of Justice Elmer in *State* v. *Babcock*, 30 N. J. L., pp. 32-33 that "between the date of the grant to Berkeley and Carteret and the Revolution the charters of New York city and the proceedings of its authorities showed that it had always been claimed that the whole of Hudson river up to low-water mark on the westerly shore belonged to that state; but it was only after the Revolution, and when it appeared that, if this claim was acquiesced in, all the wharves and improvements on the Jersey shore would be subject to the control of New York that New Jersey claimed that, by conquest from the crown, the right of New Jersey was extended to the middle of the river. This led to the appointment of commissioners for the two states to settle the conflicting claims in 1807 and again in 1827 without success."

We have not discovered that New Jersey ever claimed jurisdiction to the middle of the Hudson river and New York bay prior to 1806. In that year an act was passed (Bloomfield's Laws, p. 174), reciting the grant from Charles II to the Duke of York, the grant from the Duke of York to Berkeley and Carteret, the surrender to Queen Anne, and that subsequently New Jersey and New York became independent and sovereign states, and declares that "by virtue whereof and of the premises aforesaid the said state of New Jersey became invested with full right and lawful authority to exercise jurisdiction in and over the Hudson river and the main sea, and all the ports, harbors and havens lying adjacent to and

along the Jersey shore and coast, in such a manner as belongs to a sovereign and independent state to use and exercise." The act appointed Aaron Ogden and others commissioners to meet with commissioners to be appointed on behalf of New York to make an agreement "to settle and determine the eastern boundary line of the state of New Jersey." The third section of the act directed the governor to transmit a copy of the act to the governor of New York in order that he might lay the same before the legislature of that state at their next session. Commissioners were accordingly appointed by New York. Both commissioners met in Newark in 1807 and failed to agree. Thereupon, December 3, 1807, New Jersey passed an act reciting the failure of the negotiations, and declaring that it was expedient to bring the controversy to a conclusion, and in the meantime to preserve the lawful jurisdiction of the state. To that end it was enacted that "the boundary lines of the county of Bergen are hereby declared to be the middle or midway of the waters adjoining said county." The act declared it to be a misdemeanor for any person to attempt to execute legal process within New Jersey without authority of that state, and prescribes severe penalties for violating the act. Three thousand dollars were appropriated, to be used under direction of the governor to prosecute or defend any suit which he might deem necessary to try and determine the jurisdictional line between the states, and added that if New York should before the first day of May following empower commissioners to enter into friendly negotiations for the settlement of

the boundary line, the governor might renew the powers of the commissioners appointed by the act of 1806 and authorize them to settle the controversy. (Revised Laws of N. J., 1821, p. 533.)

Two supplements to this act were passed providing for its more efficient enforcement, one January 30, 1818 (Revised Laws of N. J., 1821, p. 614), and the other February 25, 1820.

In the year 1808, April 6th, the legislature of New York passed an act reciting the claim of New Jersey, the meeting of the commissioners and their failure to agree, and parts of the report made by the commissioners appointed on the part of New York, in which the claim of New Jersey is stated and contradicted, and thereupon proceeded to enact that it should be the duty of the person administering the government of New York, and all subordinate officers, by all lawful ways and means, to preserve, maintain and defend the jurisdiction of that state in and over the territory in dispute until the state should be evicted in due course of law. The act denounces severe penalties against anyone who should within said territory, oppose, dispute or hinder any public official of New York in the execution of his office or do any other unlawful act as under the authority of the state of New Jersey, or by color or pretext that the place where such act was done was not within the jurisdiction of New York. The act declares that "the whole of said river Hudson, southward of the northern boundary of the city of New York, and the whole of the said bay between Staten island and Long island shall so far forth be deemed

within the jurisdiction of the city and county of New York, as that all offences against this act shall be cognizable in the courts held in and for the said city and county," and adds that if New Jersey should institute any suit to recover the territory or any part thereof the governor of New York for the time being should retain and employ counsel and otherwise provide for the defence of the state, and appropriate money to pay the expense thereof. Record, p. 63. Although the controversy so became acrimonious, other conferences were held and efforts made to adjust the dispute amicably. The arguments of the advocates of both states were based on the information above recited, and from which they drew different conclusions.

Failing to reach an agreement, New Jersey, on February 20th, 1829, filed a bill against New York in this court, asserting that the true boundary line between the states was the middle of the Hudson river and New York bay, and claiming that by a true construction of the grant to Berkeley and Carteret, Staten island and all islands west of the middle of said river and bay were parts of New Jersey; but admitted that the long possession of the islands by New York, which had been acquiesced in by New Jersey *per force*, might be held to establish title thereto in New York. The bill, however, alleged that New York had no such basis of title to the land under water, for the reason that no such possession thereof could be shown, New York refused to appear and answer the bill, although efforts were made to force her to do so. (*New Jersey* v. *New York*, 3

Pet., 461; S. C., 5 *ib.*, 283; S. C., 6 *ib.*, 323.) The bill was dismissed on the 15th of February, 1836, two or three years after the compact to settle the controversy had been made and ratified. A summary of the bill may be found in 108 U. S., 406-410.

THE REVOLUTION OF 1776-83 DID NOT LOCATE THE BOUNDARY LINE IN THE MIDDLE OF THE RIVER AND BAY.

It may be urged that New Jersey obtained jurisdiction to the middle of the river and bay, not by virtue of the grant to Berkeley and Carteret, but by the Revolution, whereby our independence of Great Britain was accomplished. But such a view would overlook the fact that prior to the Revolution, New York and New Jersey were colonies independent of each other, with defined boundaries, separate legislatures, and distinct systems of laws. The Revolution did not change their boundaries, but simply made them independent of Great Britain, and subject to whatever governments they had formed and which had been formed by the Articles of Confederation. We have no doubt that if the colony of New York prior to the Revolution had been bounded on the west and New Jersey on the east by the Hudson river, the river itself, being navigable and tidal, would have remained the property of the Crown (*Shively* v. *Bowlby*, 152 U. S., 1, 13), and when the king relinquished sovereignty over the states by the treaties of 1781-83 it would have been but natural for the states to extend their jurisdiction to the middle of the river and maintain it.

This appears to have been the situation of the Delaware river between New Jersey and Pennsylvania, and in 1783, after the close of the Revolution, an agreement was made between those states providing for concurrent jurisdiction over the waters of the river and annexing the islands—New Jersey acquiring the islands east and Pennsylvania the islands west of the middle of the river. (Revised Laws of N. J., 1821, pp. 57 and 59; General Stats., N. J., p. 3472, and *State* v. *Davis*, 25 N. J. Law, 386).

On this point a report made by a committee of the assembly of New York relating to the question, dated April 6th, 1831, is important. The report was made after New Jersey had asserted her claim to jurisdiction over the land and waters in question, and states:

> "New Jersey was never in possession of the waters she now claims, whilst this state [New York] has been in actual possession thereof, exercising entire and unhindered jurisdiction long anterior to the war of the Revolution until now. But New York claims no more now than she did when a colony—possesses no more than when, after a successful rebellion against the mother state, she became sole and independent, and seeks to enforce her right to no more now than when she and New Jersey together with eleven other free and sovereign states, entered into the Constitutional compact in the 12th year of their independence. As her territorial jurisdiction was then, so it must now remain. Not a line of the territory over which she then exercised her sovereignty can now be altered. What she was when sole and independent she still remains, so far as territorial sovereignty is concerned."

This report indicates plainly what New York understood by the word "jurisdiction," and the legal opinion therein expressed we think is sound. (N. Y. Assembly Doc., Vol. 4 (1831), No. 314. See also Hoffman's Estates and Rights of the Corp. of N. Y., vol. 1, p. 20).

FILED.
APR 15 1908
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 203.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY AND ROBERT DAVIS, COLLECTOR.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

BRIEF FOR DEFENDANTS IN ERROR.

WARREN DIXON,
Counsel for Defendants in Error.

(20,534.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 203.

CENTRAL RAILROAD OF NEW JERSEY, PLAINTIFF IN ERROR, PROSECUTOR BELOW,

vs.

MAYOR AND ALDERMEN OF JERSEY CITY, DEFENDANTS IN ERROR, DEFENDANTS BELOW.

ON ERROR; ON CERTIORARI.

BRIEF FOR DEFENDANTS IN ERROR.

The plaintiff in error seeks to escape the payment of taxes levied by Jersey City in the year 1899 upon certain premises belonging to the said plaintiff, situated under the waters of New York Bay; and the said premises consist of two blocks of land under water on either side of the National Storage Company.

Point One.

The first two reasons assigned by the plaintiff in error in the court below were that the property in question has been assessed for more than its true value and at a higher rate than other property in the same district. The State Board of

Taxation having affirmed this assessment upon the evidence before them, this court will not review such questions on certiorari.

Point Two.

The remaining reasons amount to a contention that the land in question was never within the corporate limits of Jersey City and is not subject to taxation by said city. This claim rests upon two points: First, that the boundaries of New York extend to low-water mark on the west side of the Hudson River and New York Bay; and, second, that there is a certain indefiniteness in the description of the town of Greenville, afterward made a part of Jersey City.

It is the settled law of the State of New Jersey that lands under water within the State limits originally belonged to the State, and that title by holders other than the State is acquired from the State. The title to lands under water within the present limits of the State were vested in the King of Great Britain at and before the Revolution of 1776, and became vested by the law of nations and by the right of conquest in the people of the then Colony and now State of New Jersey by the War of Independence.

Martin *v.* Waddell, 17 Peters, 367.
Arnold *v.* Munday, 1 Halsted, 1.
Stevens *v.* Railroad Co., 5 Vroom, 540.
McCready *v.* Virginia, 94 U. S., 391.

It is contended, therefore, that the State of New Jersey was seized in fee simple absolute in the soil covered by the waters of the Hudson River; and the said lands, being within the boundaries of the said State, were subject only to the paramount easement of navigation and to the power of regulating such easement possessed by the United States.

The State of New Jersey has always claimed ownership of the lands under water out to the middle of the Hudson River and the Bay of New York.

In the first place, the well-settled rule of the law of nations is that where an arm of the sea or a river is the boundary between two nations or States, if the original right of jurisdiction is in neither, in the absence of any convention respecting it, each holds to the middle of the stream.

Angell on Tide-waters, p. 7.
Vattel, B. 1, ch. 22, sec. 266.
Marten, B. 4, ch. 3, 4, 5.

In the second place, the boundary line between the States of New York and New Jersey was determined by commissioners appointed by the respective States, who executed a contract which was ratified by the Legislature of New Jersey (Pamp. Laws of N. J., 1834, p. 119), and by the Legislature of New York (Pamp. Laws of N. Y., 1834, p. 8, Exhibit City), which compact was ratified, approved, and confirmed by an act of Congress (U. S. Statutes at Large, vol. 4, p. 708).

Article I of this compact declares:

"The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point of the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the water between Staten Island and New Jersey, and of Raritan Bay to the main sea, except as hereinafter otherwise particularly mentioned.

"Art. II. The State of New York shall retain its present jurisdiction of and over Bedlow's and Ellis' Islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that State.

"Art. III. The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the Bay of New York, and of and over all the waters of the Hudson River, lying west of Manhattan Island, and to the south of the mouth of Spuytenduyvel Creek, and of and over the lands covered by the said waters to the low-water mark on the westerly or New Jersey side thereof, subject to the follow-

ing rights of property and jurisdiction of the State of New Jersey, that is to say:

"(1.) The State of New Jersey shall have the exclusive right of property in and to the land under water, lying west of the middle of the Bay of New York, and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

"(2.) The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessel shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York, which now exist or which may hereafter be passed.

"(3.) The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters, provided that the navigation be not obstructed or hindered."

It cannot be contended that it was the intent of the sovereign States who were parties to this agreement to hold that the State of New Jersey ceded its sovereignty in and over the waters of the Hudson River or the lands lying thereunder within the boundaries of the State of New Jersey, as established by the compact itself. The compact is, in fact, an expression of mutual grants by each of the States to the other, and its object was to define the boundary of and within which each State should exercise its prerogative jurisdiction and proprietary rights. The exception must be construed strictly, and, so construed, article 4 gives to New York merely the power of executing its quarantine law and laws relating to passengers as to vessels passing over the waters of the Hudson River, and by necessary implication reserves to New Jersey every other political or governmental jurisdiction and dominion, and all prerogative, proprietary, and sovereign rights in and over the waters of the Hudson River and the lands lying thereunder and with the boundary fixed by the agreement. This compact

in question has been considered and construed by the Court of Appeals of the State of New York in the case of The People *v.* Central Railroad of New Jersey, 42 N. Y. Repts., 283. This adjudication is conclusive and is in accordance with the contention hereinbefore stated. The opinion in this case is shown in Exhibit City.

The action of the State of New Jersey in respect to its lands lying under its navigable waters within its boundaries, through various statutes passed by the Legislature, constitutes a continued exercise and assertion of its ownership. (See "An act for preserving oysters in the Province of New Jersey," passed in the fifth year of George I—Nevill's Laws, page 86; "An act for the preservation of oysters," passed January 26, 1789; "An act for the preservation of clams and oysters," passed June 9, 1820, page 758; Act of April 14, 1846—Rev. of 1847, page 492; Rev. of 1877, p. 138; the wharf act, passed March 18, 1851—Rev. of 1877, page 1240; the various riparian statutes—Gen. Statutes, page 2785).

This boundary line was also definitely agreed upon and definitely located and fixed by the Boundary Line Commission appointed by the States of New York and New Jersey in 1888. By the action of this Commission, ratified by the respective States, the boundary line between the States was fixed at the middle of the Hudson River and Bay of New York. The location of this line is shown in the map marked as exhibits in the case, and the report of the Commission is in evidence as Exhibit C.

The treaty between the two States and the history connected with it shows that New Jersey made a continuous claim of boundary to low-water mark on the Hudson River. After the Declaration of Independence the general principle of national law fixed the boundary between the two independent States at the middle of the river. New York has never claimed any sovereignty over the property in question or ascertained any right under the treaty to tax it, but its

courts have expressly denied that any such construction could be given to the compact. The necessary result is, if New Jersey has lost its sovereignty and New York has not acquired it, the anomaly is presented of a valuable piece of property within the territorial limits of New Jersey which is exempted from taxation.

The point made by the plaintiff in error as to the indefiniteness of the limits of Jersey City will be found upon examination not to sustain the contention that the lands in question are without the limits of Jersey City. This can be best shown by an historical and chronological résumé of the different laws involved.

It should be noted in passing that this point only involves a part of the lower, or second, tract involved in this suit. The upper piece is conceded to be within the limits of Jersey City in respect to this point.

(1.) The land in question formerly was included in the township of Bergen. The township of Bergen appears to have commenced with the grant of the charter to the Town and Freeholders of Bergen by Carteret and Berkley, under date of September 22, A. D. 1668 (Plaintiff's Exhibit 13). The description in the said grant is as follows:

"The Bounds and Limitts of the aforesaid Towne and "Corporation of Bergen is to begin at the North end thereof, "from a place called Mordavis Meadow, lying upon the West "side of Hudson's River, from thence to run upon a N. W. "lyne by a Three rail fence that is now standing to a place "called Espatin, and from thence to a little creek surround-"ing the N. N. W. till it comes into Hackensack river, con-"taining a Bredth from the top of the Hill 1½ miles or "120 chains, from thence it runs along the said Hackensack "river upon S. S. W. lyne till it comes to the Point or "Neck of Land that is over against Statten Island or Shooter's "Island in Arthur Jull Bay, containing in length about 12 "miles, from thence to run Eastward along the river called "Kill Van Cull that parts Staten Island and the Maine to a "point or neck of Land called Constable's Point, or Con-

"stable's Houck, and from thence to run up Northward all "along the Bay up into Hudson's river till it comes to Mor- "davis Meadow aforesaid; So that the whole tract of upland "and Meadow property belonging to the Jurisdiction of the "said Town and Corporation of Bergen is bounded at the "North End by a Tract of Land belonging to Captn. Nicho. "Verlett and Mr. Samuel Edsall. On the East Side by Hud- "son's river, on the South end by the Kill Van Cull, that "parts Staten Island and the Maine, and on the west side by "Arthur Cull Bay W and Hackinsack river, as it is more "plainer demonstrated by a draught thereof, made by the "Surveyor General, hereunto annexed, The whole, both of "upland and Meadows, and Waist lands, containing accord- "ing to the Survey 11,520 Acres English measure; Which "said Limitts and bounds, together, with all the Rivers, "Ponds, Creeks, Islands, Inlets, Bays, Fishing, Hawking, "Hunting, and all other appurtenances whatsoever thereunto "belonging and appertaining."

This description takes in all the lands under water to the middle of the Hudson River, New York Bay, Kill Von Kull, and the Hackensack River.

(2.) An act of the New Jersey Legislature passed January 28, 1820, entitled "An act to incorporate the City of Jersey, in the County of Bergen" (Laws of 1820, p. 86), contains the following description:

"All that portion of the Township of Bergen in the "County of Bergen now owned by the Jersey Associates, "formerly called Powles Hook and which is constituted and "surrounded by a certain ditch as the boundary line between "the Jersey Associates and the lands of Cornelius Van Vorst, "deceased, on the west and northwest and by the middle of "the Hudson River, and the Bay surrounding all the other "parts of the same."

This shows that the part of Bergen township on the north of the tracts of land in question then extended out to the middle of the Hudson River.

(3.) On January 23, 1829, the Legislature of New Jersey passed an act entitled "An act to incorporate the city of Jersey, in the County of Bergen, and to repeal the former act" (P. L. 1820, p. 662).

This act repealed the act of 1820 and established a new corporation, to be known as the Board of Selectmen and Inhabitants of Jersey City. The territorial description read as follows:

"All that part of the township of Bergen formerly called "Powles Hook bounded on the west by a certain ditch run- "ning between the lands of the Associates of the Jersey Com- "pany and those late of Cornelius Van Vorst, deceased, and "by the middle of the Hudson River and the bays surround- "ing all other parts of the same."

In this act powers are given to the Board of Selectmen in reference to quarantine, relating to the setting up of fishing poles, and in relation to the anchoring and mooring of vessels "within the water of said city." All this shows that the eastern boundary of the town of Bergen was in the middle of the Hudson River.

(4.) On March 7, 1838, the Legislature of New Jersey passed an act entitled "An act to incorporate Jersey City" (P. L. 1838, p.). This act contained the following description:

"All that part of the township of Bergen formerly called "Powles Hook, bounded on the west by a certain ditch run- "ning between the lands of the Associates of the Jersey "Company and others and lands late of Cornelius Van Vorst, "deceased, and by the middle of the Hudson River and the "bays surrounding all the other parts of the same."

This confirms the boundary of Bergen township in the middle of the Hudson River.

(5.) In 1840 the Legislature of New Jersey passed an act creating Hudson County (P. L. 1840, p. 65; Gen. Stat., p. 1007). The description in said act reads as follows:

"Beginning at the northeasterly corner of the present "township of Bergen in the boundary line between this state "of New York; thence running westwardly on the line which "divides the said township of Bergen from the township of "Hackensack to the Hackensack River; thence down the "middle of the said Hackensack River to the middle of the "turnpike road of the New Barbadoes Toll Bridge Company; "thence westerly along the middle of the said turnpike road, "in the various courses thereof, to the middle of the abutment "of the bridge across the Passaic, opposite the village of "Acquackanuck; thence along the middle of said bridge to "the point where it meets the line between the present "County of Passaic and Bergen; thence down the said Pas-"saic River and Newark Bay, in the several courses thereof, "on the boundary line between the county of Bergen, as the "same stood before the passing of this act, and the counties "of Passaic and Essex, to Kill von Kull; thence eastwardly, "on the boundary line between this state of New York to the "Hudson River; thence northwardly, continuing on the said "boundary line between this state and the state of New York "up the said Hudson River to the place of beginning."

This clearly includes both tracts of land in controversy herein.

(6.) An act passed in 1848 (P. L. 1848, p. 88) was one of a series of acts in reference to Van Vorst township in which the boundaries of said township were defined as a part of the township of Bergen, and particularly locates the eastern boundary of said township in the middle of the Hudson River.

(7.) On March 18, 1851, the Legislature of New Jersey passed an act entitled "An act to incorporate Jersey City" (P. L. 1851, p. 392). This act provides:

"That the City of Jersey shall hereafter consist of all the "territory included within the following boundaries, that "is to say:

"Commencing at the southwest corner of Block No. 76, "as shown on the Map of Property of Cornelius Van Vorst,

"being the intersection of South and Dutch Streets; and "from thence south sixty degrees east to the middle of the "Hudson River; thence up the middle of said river and par- "allel with Hudson Street to a point in said river bearing "south sixty degrees east from the south of Harsimus or "Mill Creek; thence north sixty degrees west to the said Mill "Creek; thence up the middle of said Creek [here follow "several courses immaterial to this controversy] to the Mill "Creek on the south side of the New Jersey Railroad; thence "down the middle of said creek to the mouth thereof where "the same empties into Communipaw Cove or Bay, and "thence to the corner of said Block 76, the place of begin- "ning."

(8.) In 1855 the Legislature incorporated the "Town of Bergen" by the following description:

"All that part of the Township of Bergen lying within the "following boundaries, to wit:

"Beginning at the most westerly corner of the Town of "Hudson, where the New Jersey Railroad crosses the Hack- "ensack River; thence easterly along the line of the New "Jersey Railroad its several courses to the center of Mill "Creek, the northwesterly line of Jersey City; thence south- "erly down the Mill Creek its several courses into New York "Bay as far as the boundary of Bergen Township extends; "thence southerly along said boundary line in said Bay to "where it intersects an air line passing through the waste "gate near the southerly line of the Morris canal; parallel "with the southerly line of said canal; thence westerly along "said air line through said waste gate and into the Morris "Canal, along the line of said Canal its several courses to "where it nears Newark Bay; thence an air line parallel with "the southerly line of the Morris Canal into Newark Bay as "far as the Bergen Township extends; thence northerly "along said boundary line in said Bay and Hackensack River "their several courses to the place of beginning" (P. L. 1855, p. 439).

It is plain from this that in 1855 the township of Bergen, out of which the town of Bergen by the foregoing act was carved, included at least part of both tracts of land involved

in this suit, and included all of these tracts, provided the line of Bergen township extended sufficiently far into the bay to include the said land, which the facts and description hereinbefore recited prove to be the case.

(9.) In 1861 the Legislature passed an act entitled "An act creating a new township in Hudson County, to be called the township of Bayonne" (P. L. 1861, p. 454).

The description was as follows:

"All that part of the Township of Bergen in the County "Hudson, lying south of the Morris Canal, included within "the following boundaries, that is to say: Commencing at a "point in Newark Bay where a line, if drawn from a point "where the Morris Canal nears said bay into the same at "right angles thereto, would intersect the westerly boundary "of the Township of Bergen; thence southeasterly along the "said line to the Morris Canal; thence along the southerly "line of the Morris Canal to New York Bay; thence into "said bay, at right angles thereto, to the boundary line "between the states of New Jersey and New York; thence "along said boundary line, through New York Bay and the "Kill von Kull, into Newark Bay, as far as the boundary of "the township extends; thence along said boundary line in "Newark Bay to the place of Beginning."

(10.) In 1862 the Legislature passed an act incorporating the town of Bergen and repealing the act of 1855 (P. L. 1862, p. 162). This act simply repeals the act of 1855 and incorporates as the "Town of Bergen" the then remaining portion of the township of Bergen. This is a mistake; there was no remaining portion of the township of Bergen; it should be town of Bergen.

The town of Greenville was created by virtue of an act of the Legislature passed March 18, 1863 (P. L. 1863, p. 306), entitled "An act creating from the town of Bergen, in the county of Hudson, a new township, to be called the township of Greenville." By the terms of this act the township of Greenville was incorporated by the following description:

"All that southwestern part or portion of the Township of "Bergen as it existed immediately previous to the passage "of said act (meaning the act of 1862 incorporating the "Town of Bergen). This is the same mistake as in the act "of 1862. It should read Town of Bergen, and comprised "as nearly so within the limits of what is known as Washing-"ton School District No. 3, bounded on the southwest by New "York Harbor; on the west by the Morris Canal and land of "James Currie, Esquire; on the northwest by Newark Bay "and the Hackensack River; on the northeast by a road or "lane known as Myrtle Avenue with a continued line run-"ning southeasterly from said avenue to New York harbor "northwesterly from said harbor to the Hackensack River; "this last boundary being the unadjusted dividing line be-"tween the Town of Bergen and the Township by this act "incorporated."

This act continues:

"The inhabitants of the said Township of Greenville are "hereby constituted a body politic and corporate in law and "shall be entitled to all the rights, powers, authority and "entitled to all the privileges and subject to the same laws as "were the inhabitants of the Township of Bergen previous to "the passage of the act incorporating the Town of Bergen, "and all other existing laws of the State not conflicting with "this act."

The said act of 1862, incorporating the Town of Bergen, is repealed in so far as the same affects the township created by this act of 1863.

Section 4 of the said act of 1863 provides for the appointment of a commission of five men from the township of Greenville created by this act, and five persons to be appointed by the councilmen of the town of Bergen, which commissioners "shall adjust the dividing line between the "town of Bergen and the township of Greenville; the avenue "aforementioned as Myrtle avenue forming the basis of the "line of demarcation." The said section directs that a copy of the decision of this commission as to the said dividing line between the town of Bergen and the township of Green-

ville, signed by the parties, shall be filed with the town clerk of the town of Bergen and with the clerk of the township of Greenville, and that the decision thus made and filed shall be obligatory on all parties concerned.

The commissioners met and agreed upon a dividing line between the town of Bergen and the township of Greenville. The original of this map is not on file in the Jersey City Hall (testimony of Edwards, Case, p.), but defendant has put in evidence (Exhibit City) a map and field-notes entitled "Map showing division line setting Greenville township from the town of Bergen, September 19th, 1863, by G. J. Van Horne, C. E., town surveyor, town of Bergen, Hudson County, N. J., September 19th, 1863," on file in the Hudson County Clerk's office. A copy is offered in evidence for convenience.

The line shown on the map is thus described in the annexed field-note:

"Beginning at a stone monument in the centre of Myrtle "avenue at Claremont and in the North West side of the "Jersey City and Bergen Pt. Plank Road; thence, running "some fifty degrees and twenty minutes East across a stone "monument (in the Road leading to Cavan Point) to the "shore on New York Bay and thence continuing in the same "straight line produced until it strikes the North East side "of Bedloe's Island in said Bay, and extending into said "Bay until it intersects the original boundary line of the "Township of Bergen [as the city claims the original bound-"ary line between New York and New Jersey]; thence re-"turning to the place of beginning and running along the "centre of Myrtle avenue North sixty-seven degrees and "thirty-one minutes West two hundred and ninety-seven feet "and eight-tenths of a foot to an angle; thence along the "centre of Myrtle Avenue North forty-nine degrees west "seven hundred and eighty-one feet and three-tenths of a "foot to the centre of Ocean Street; thence along the centre "of Ocean Street North twenty-nine degrees and twenty-five "minutes East forty-six feet and nine-tenths of a foot "to a stone monument at the intersection of Myrtle "Avenue; thence along the centre of Myrtle Avenue "North, forty-one degrees and fifty-four minutes west six

"hundred and sixty-seven feet to an angle; thence along "the centre of Myrtle Avenue thirty-seven degrees and "twenty-four minutes West one hundred and eighty-five feet "to an angle; thence along the centre of Myrtle avenue north "forty-three degrees and forty-three minutes and twelve "hundred and seven feet to a stone monument in the centre "of Bergen Avenue or Back Road; thence along the centre "of said Bergen Avenue North thirty-seven degrees and "forty-five minutes East one hundred feet to a stone monu-"ment at the intersection of the line between lands of John "Romaine and Abraham A. Vreeland; thence along said "line North forty-four degrees and thirty-two minutes west "sixteen hundred and eighty-nine feet; thence along said "line South forty-six degrees and seventeen minutes West "one hundred and two feet and five-tenths of a foot to line "of land of Wm. Frost; thence along line between land of "Wm. Frost and Abraham A. Vreeland North forty-three "degrees and thirty-one minutes West two hundred and "eighty-nine feet to a stone monument in the centre of the "Back Lane; thence continuing along said line North forty-"four degrees and thirty minutes West to the Township "boundary line in the Hackensack River."

This definitely locates the northerly boundary of the township of Greenville as extending into New York Bay as far as the boundary line of New York and in the Newark Bay to the middle thereof.

Section 2 of the act of 1863, last above referred to, provides that the inhabitants of the township of Greenville shall have the same rights, etc., as the inhabitants of the township (should be "town") of Bergen previous to the passage of the act of 1862 incorporating the town of Bergen. The act of 1862, after repealing the act of 1855, simply made the inhabitants of the township (should be "town") of Bergen into the "town of Bergen."

This would operate to extend the bounds of Greenville in the New York Bay as far as the bounds of the township of Bergen extended, which, as we have seen, was the New York State boundary line.

(11.) In 1868 the Legislature passed an act entitled "An act to incorporate the city of Bergen" (P. L. 1868, p. 314). This act provided:

"That the City of Bergen shall hereafter consist of all "the territory included within the following boundaries, "that is to say: beginning at the most westerly corner of the "City of Hudson; in the County of Hudson, where the New "Jersey Railroad crosses the Hackensack River; thence east- "erly along the centre line of the New Jersey Railroad its "several courses to the centre of Mill Creek; thence southerly "along the centre of Mill Creek its several courses into New "York Bay, until it intersects the boundary line of the State "of New York; thence southerly along said boundary line of "the State of New York until it intersects the dividing line "between the township of Greenville and the city [Query: "Should not this be town?] of Bergen; thence westerly along "said line to the middle of the Hackensack River, thence "northerly along the middle of the Hackensack River its "several courses to the place of beginning, comprising the "same territory heretofore known and incorporated as the "'Town of Bergen.'"

(12.) In 1869 the Legislature passed an act entitled "An act to consolidate and make into one city, to be called Jersey City, the cities of Jersey City, Hudson City, Hoboken and Bergen, the town of Union, and the townships of North Bergen, Union, West Hoboken, Greenville, Bayonne and Weehawken, and part of the township of Kearney" (P. L. 1869, p. 1377). This act provided:

"That the city of Jersey City shall hereafter consist of all "the territory included within the following boundaries:

"Beginning at the boundary line separating the State of "New Jersey from the State of New York, on the southwest "corner of the county of Hudson and running thence north- "erly through the middle of Newark Bay to the Passaic "River, thence northerly through said river to the Newark "plank road; thence northerly in a straight line to a point "one thousand feet west of the mouth of Saw Mill Creek, "thence easterly to the middle of the Hackensack River, "thence northerly through the centre of said river to Bergen

"County, thence easterly along the line dividing the counties "of Hudson and Bergen to the Hudson River, thence south- "erly along said river to New York Bay, thence southerly "along said bay to the Kill von Kull, thence along said Kill "von Kull to the Place of Beginning."

This act contained a referendum by which only those cities and towns who voted to accept it were to be subject to its provisions. Greenville township, among others, voted not to come in, but the act operates as a legislative recognition of the bounds of Greenville township as extending into New York Bay as far as the New York water boundary line.

(13.) In 1870 the Legislature passed an act entitled "An act to consolidate and make into one city the cities of Jersey City, Hudson, and Bergen" (P. L. 1870, p. 1170).

This act merely ratified the election held under the act of 1869, but it contained this description:

"Beginning in the middle of the Hudson River, at a "point bearing south sixty degrees east from the southwest "corner of block number seventy-six, as shown on the map "of property of Cornelius Van Vorst; thence running north- "erly up the middle of the Hudson River to a point bearing "south sixty degrees east from the northerly mouth of Har- "simus or Mill Creek; thence north sixty degrees west to the "said Mill Creek, thence up the middle of the said Mill "Creek to the first branch thereof [various courses immate- "rial to this inquiry]; thence down the middle of the Passaic "River to its junction with the Hackensack River; thence "northeasterly up the middle of said Hackensack River to "the Newark and New York railroad bridge; thence easterly "along the centre of said railroad to the boundary line be- "tween the City of Bergen and the Township of Greenville; "thence southeasterly along said boundary line to the shore "of New York Bay; thence in a continuous course with the "last mentioned boundary line to a point in New York Bay, "where the centre line of the Hudson River produced south- "early would intersect the same; thence northerly along the "centre line of the Hudson River produced to the place of "beginning, provided that no part of the territory west of

"the middle of the Hackensack River shall be included in "the boundaries of said city."

This description takes in nearly all of the upper tract of land in question. (See line dividing Bergen from Greenville, on Plaintiff's Exhibit .)

(14.) In 1871 an act was passed entitled "An act to reorganize the local government of Jersey City" (P. L. 1871, p. 1094). By this law it was enacted

"That Jersey City shall hereafter consist of the territory "comprised within the following boundaries to wit:

"Beginning in the middle of the Hudson River at a point "bearing south sixty degrees east from the southwest corner "of Block No. 76 as shown on the map of property of Cor- "nelius Van Vorst; thence running northerly up the middle "of the Hudson River to a point bearing south sixty degrees "east from the northerly mouth of Harsimus or Mill Creek; "thence up the middle of said Creek [here follow various "courses immaterial to this inquiry] ending at the inter- "section of the center of Pen Horn Creek and the center of "the Hackensack River; thence along the center of Hack- "ensack River southerly its several courses to the present "boundary line between Jersey City and Greenville; thence "easterly along said boundary line to the shore of New York "Bay; thence along said shore to the line which, before the "passage of this act, divided Jersey City from Greenville "[NOTE—This course is evidently a mistake, as it is prac- "tically the same as the course last mentioned]; thence along "said last mentioned line its several courses to a point in "New York Bay where the center line of the Hudson River "produced southerly would intersect the same; thence north- "erly and along the center of the Hudson River to the place "of beginning."

This includes nearly all the northerly tract of land in question in this suit.

(15.) A supplement to the act of 1871 was passed in 1873 (P. L. 1873, p.), providing "that Jersey City shall here-

after consist of not only the territory hitherto comprised within these limits, but also the territory now comprised within the limits of the said township of Greenville."

This takes in the remainder of the land in question herein if the bounds of Greenville township extend in New York Bay, and that they did is proved (*a*) by the boundary line established by the commissioners under the act of 1863, and by (*b*) the description in the act of 1863 recognizing the northerly line of said township as being out in New York Bay, and (*c*) by the description of Bayonne township in the law of 1861, and (*d*) finally by—

(16.) A boundary line between Bayonne and Jersey City as fixed and determined by a commission appointed for that purpose by Judge Knapp pursuant to an act of 1889, page .

This commission fixed the boundary line as commencing in the New York State line in New York Harbor, and thence running westerly to and along the Morris Canal, and thence into the Hackensack River. (See Exhibit City.)

(17.) If this land is not within the limits of Jersey City, it is a township by itself—probably the township of Bergen. It is inconceivable that the legislature could have had any such intent.

Point Three.

Lands under water formerly belonging to the State and granted by the State to property-owners are subject to taxation. This is settled by the following cases: Morris Canal and Banking Company *v.* Jersey City, 6 Vroom, 178; State, Coles, pros., *v.* Pratt, 4 Zab., 108; State, Bentley, pros., *v.* Sippl, 1 Dutcher, 530; 14 Vr., 121; 17 Vroom, 341.

Counsel respectfully calls this court's attention particularly to the opinion of Mr. Justice Garrison, filed in the

Supreme Court in this case (Book, p. 110), 41 Vroom (N. J.), 81.

It is therefore respectfully submitted that the proof is plain, both by special and detailed description, that the land in question is within the limits of this State, and it is equally plain and by necessary implication that the legislative intent was to include the same within the limits of Jersey City. When to this is added the legal power in Jersey City to tax these lands and the exercise by the city of the right to tax the same and others similarly situated for more than twenty years (see testimony of Edwards), and that this right has been recognized by plaintiff in error by the payment of said taxes for all these years, its right to claim exemption from the tax of 1899 on the theory that the lands in question are not within the State or city limits is seen to be without a shadow of right, legal, equitable, or moral.

Respectfully submitted,

WARREN DIXON,
Of Counsel with Defendant in Error.

CENTRAL RAILROAD COMPANY OF NEW JERSEY v. JERSEY CITY.

ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

No. 203. Argued April 15, 16, 1908.—Decided April 27, 1908.

"Jurisdiction" as generally used in compacts between States has a more limited sense than "sovereignty."

Under the agreement of 1833 between the States of New York and New Jersey, 4 Stats. 708, while exclusive jurisdiction is given to New York over the waters of the Hudson River west of the boundary line fixed by the agreement, the land under such waters remained subject to the sovereignty of New Jersey and the jurisdiction given to New York over the waters does not exclude the sovereign power of New Jersey to tax such land,—nor does an exercise of that power deprive the owner of the land of his property without due process of law.

This court in construing a compact between States will hesitate to reach a conclusion different from that reached by the highest courts of both States.

43 Vroom, 311, affirmed.

THE facts are stated in the opinion.

Mr. Frank Bergen and *Mr. William D. Edwards*, with whom *Mr. George Holmes* was on the brief, for plaintiff in error:

Prior to the execution of the compact New Jersey did not have jurisdiction for any purpose over the land under the waters of Hudson River and New York Bay and has no jurisdiction now below low-water mark of the river and bay or over the property of the plaintiff in error except that conferred by the compact. *Corfield* v. *Coryell*, 4 Wash. C. C. R. 371, cited and approved in *State* v. *Davis*, 25 N. J. Law, 387; *Handley's Lessee* v. *Anthony*, 5 Wheat. 374; *Shively* v. *Bowlby*, 152 U. S. 1, 13; *Martin* v. *Waddell*, 16 Pet. 345; *Henderson Bridge Co.* v. *Henderson City*, 173 U. S. 592.

By the compact exclusive jurisdiction was granted or conceded to New York over the land of the plaintiff in error, sub-

ject only to the right of New Jersey to regulate fisheries in the waters covering the same, provided navigation be not obstructed. It is admitted that if any docks, wharves or improvements had been made on the property they would be subject to taxation by New Jersey and (in this instance) as part of the upland. There are, however, no improvements on the property. *State* v. *Babcock*, 1 Vroom, 29; *Kiernan* v. *The Norma*, 32 Fed. Rep. 411; *Ferguson* v. *Ross*, 126 N. Y. 459.

Authority to regulate fisheries in the waters covering the property of the plaintiff in error does not involve the power to tax it.

The word "jurisdiction" is used in the compact in its broad common sense; that is, the power to govern—to exercise executive, legislative and judicial authority. We think the word was not used for the limited purpose of conferring merely judicial authority or the right to exercise partial or indefinite police power. The term "exclusive jurisdiction" is repeatedly used, and whenever qualified the exceptions are specified as definitely as possible. *United States* v. *Cornell*, 2 Mason, 60, 64, 91; *Loughborough* v. *Blake*, 5 Wheat. 317.

Taxation cannot be imposed except by authority of a government having jurisdiction over the property assessed broad enough to include the power to tax. *Louisville & Jeffersonville Ferry Co.* v. *Kentucky*, 188 U. S. 385, 396; *Union Transit Co.* v. *Kentucky*, 199 U. S. 194; *D., L. & W. R. R. Co.* v. *Pennsylvania*, 198 U. S. 341; Ops. Mass. Justices, 1 Metc. 580; *United States* v. *Ames*, 1 Woodbridge & Minot, 76, 80; *Mitchell* v. *Tibbets*, 17 Pick. 298, and *United States* v. *Rice*, 4 Wheat. 246.

New Jersey does not possess the power to tax the property of the plaintiff in error. That State has no jurisdiction below the low-water mark on its shore over Hudson River and New York Bay south of Spuyten Duyvil creek except over wharves, docks and improvements made and to be made thereon and over vessels aground thereon or fastened to any dock or wharf and the right to regulate fisheries; but even this measure of

jurisdiction is diminished by the provision that such vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New York, and the right to regulate fisheries cannot be exercised so as to hinder or obstruct navigation.

Mr. Warren Dixon for defendants in error:

It is the settled law of the State of New Jersey that lands under water within the state limits originally belonged to the State, and that title by holders other than the State is acquired from the State. The title to lands under water within the present limits of the State were vested in the King of Great Britain at and before the Revolution of 1776, and became vested by the law of nations and by the right of conquest in the people of the then Colony and now State of New Jersey by the War of Independence. *Martin* v. *Waddell*, 17 Peters, 367; *Arnold* v. *Munday*, 1 Halstead, 1; *Stevens* v. *Railroad Co.*, 5 Vroom, 540; *McCready* v. *Virginia*, 94 U. S. 391.

The State of New Jersey was seized in fee simple absolute in the soil covered by the waters of the Hudson River; and the said lands, being within the boundaries of the said State, were subject only to the paramount easement of navigation and to the power of regulating such easement possessed by the United States.

The State of New Jersey has always claimed ownership of the lands under water out to the middle of the Hudson River and the Bay of New York.

By the law of nations where an arm of the sea or a river is the boundary between two nations or states, if the original right of jurisdiction is in neither, in the absence of any convention respecting it, each holds to the middle of the stream. Angell on Tide-waters, p. 7; Vattel, B. 1, c. 22, § 266; Marten, B. 4, c. 3, 4, 5.

Article 4 of the compact between the States of New York and New Jersey, as construed by the courts, gives to New York merely the power of executing its quarantine law and laws re-

lating to passengers as to vessels passing over the waters of the Hudson River, and by necessary implication reserves to New Jersey every other political or governmental jurisdiction and dominion, and all prerogative, proprietary, and sovereign rights in and over the waters of the Hudson River and the lands lying thereunder and with the boundary fixed by the agreement. *People* v. *Central R. R. Co. of N. J.*, 42 N. Y. 283.

The action of the State of New Jersey in respect to its lands lying under its navigable waters within its boundaries, through various statutes passed by the legislature, constitutes a continued exercise and assertion of its ownership. (See "An act for preserving oysters in the Province of New Jersey," passed in the fifth year of George I, Nevill's Laws, p. 86; "An act for the preservation of oysters," passed January 26, 1789; "An act for the preservation of clams and oysters," passed June 9, 1820, p. 758; act of April 14, 1846, Rev. of 1847, p. 492. Rev. of 1877, p. 138; the wharf act, passed March 18, 1851, Rev. of 1877, p. 1240; the various riparian statutes, Gen. Stat. p. 2785.)

Lands under water formerly belonging to the State and granted by the State to property owners are subject to taxation. *Morris Canal Co.* v. *Jersey City*, 6 Vroom, 178; *State* v. *Pratt*, 4 Zab. 108; *State* v. *Sippl*, 1 Dutcher, 530; and see also 14 Vroom, 121; 17 Vroom, 341.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a writ of error prosecuted to review a judgment sustaining taxes levied by Jersey City upon lands of the plaintiff in error lying between the middle of New York Bay and its low water line on the New Jersey shore. It is argued that this land, although it belonged to New Jersey until conveyed, is not within its jurisdiction, and cannot be taxed under the authority of that State. The Supreme Court upheld the tax, 41 Vroom, 81, and its judgment was affirmed by the Court of Errors and Appeals for the reasons given by the Supreme Court. 43 Vroom, 311.

The plaintiff in error contended that, as New Jersey had not the right to tax, the attempt was to deprive the prosecutor of its property contrary to the Fourteenth Amendment, and brought the case here.

The decision depends upon the construction of an agreement made between New Jersey and New York for the purpose of settling the territorial limits and jurisdiction of the two States, which previously had been the subject of dispute. This agreement was made by commissioners appointed for the purpose, was confirmed by New York on February 5, 1834, Laws of 1834, ch. 8, p. 8, and by New Jersey on February 26, 1834, Laws of 1834, p. 118, and was approved by Congress by act of June 28, 1834, c. 126. 4 Stat. 708. By Article I, the boundary line between the two States from a point above the land in dispute is to be the middle of the Hudson River, of the Bay of New York, of the water between Staten Island and New Jersey, etc., "except as hereinafter otherwise particularly mentioned." By Article II, New York retains its present jurisdiction over Bedlow's and Ellis Islands, and exclusive jurisdiction over certain other islands in the waters mentioned. By Article III, New York is to have "exclusive jurisdiction of and over all the waters of the Bay of New York, and of and over all the waters of the Hudson River lying west of Manhattan Island and to the south" of the above mentioned point, "and of and over the land covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the State of New Jersey, that is to say: 1. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the Bay of New York and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey." 2. New Jersey is to have exclusive jurisdiction over wharves, docks and improvements made or to be made on its shore and over vessels aground or fastened there, subject to the quarantine and passenger laws of New York. 3. New Jersey is to have the exclusive right of

regulating the fisheries on the west of the middle of said waters, providing that navigation be not obstructed or hindered.

The other articles need but brief mention. Article IV gives New York "exclusive jurisdiction" over the waters of the Kill van Kull "in respect to such quarantine laws and laws relating to passengers &c. and for executing the same," and over certain other waters. Article V gives New Jersey exclusive jurisdiction over certain other waters subject to New York's exclusive property and exclusive jurisdiction over wharves, docks and improvements within certain limits, and exclusive right of regulating the fisheries on its side, as above in the case of New Jersey. Articles VI and VII provide for the service of criminal and civil process of each State on the waters within the exclusive jurisdiction of the other. Article VIII and last calls for the confirmation of the agreement by the two States and approval by the Congress of the United States.

Thus the land which has been taxed is on the New Jersey side of the boundary line but under the "exclusive jurisdiction" of New York, subject to the exclusive right of property in New Jersey and the limited jurisdiction and authority conferred by the paragraphs summed up. The question is which of these provisions governs the right to tax. It appears to us plain on the face of the agreement that the dominant fact is the establishment of the boundary line. The boundary line is the line of sovereignty, and the establishment of it is not satisfied but is contradicted by the suggestion that the agreement simply gives the ownership of the land under water on the New Jersey side to that State as a private owner of land lying within the State of New York. On the contrary, the provision as to exclusive right of property in the compact between States is to be taken primarily to refer to ultimate sovereign rights, in pursuance of the settlement of the territorial limits, which was declared to be one purpose of the agreement, and is not to be confined to the assertion and recognition of a private claim, which, for all that appears, may have been inconsistent with titles already accrued and which would lose significance the

moment that New Jersey sold the land. We repeat that boundary means sovereignty, since in modern times sovereignty is mainly territorial, unless a different meaning clearly appears.

It is said that a different meaning does appear in the Article (III) that gives New York exclusive jurisdiction over this land as well as the water above it. But we agree with the state courts that have been called on to construe that part of the agreement that the purpose was to promote the interests of commerce and navigation, not to take back the sovereignty that otherwise was the consequence of Article I. This is the view of the New York as well as of the New Jersey Court of Errors and Appeals, and it would be a strange result if this court should be driven to a different conclusion from that reached by both the parties concerned. *Ferguson* v. *Ross*, 126 N. Y. 459, 463; *People* v. *Central R. R. Co.*, 42 N. Y. 283. This opinion is confirmed by the judgment delivered by one of the commissioners in *State* v. *Babcock*, 1 Vroom, 29. Again, as was pointed out by the state court, the often expressed purpose of the appointment of the commissioner and of the agreement to settle the territorial limits and jurisdiction must mean by territorial limits sovereignty, and by jurisdiction something less. It is suggested that jurisdiction is used in a broader sense in the second article, and that may be true so far as concerns Bedlow's and Ellis Islands. But the provision there is that New York shall retain its "present" jurisdiction over them, and would seem on its face simply to be intended to preserve the *status quo ante*, whatever it may be.

Throughout nearly all the articles of the agreement, other than those in controversy, the word jurisdiction obviously is used in a more limited sense. The word has occurred in other cases where a river was a boundary, and in the Virginia Compact was held to mean, primarily at least, *Jurisdictio*, authority to apply the law to the acts of men. *Wedding* v. *Meyler*, 192 U. S. 573, 584. Whether in the case at bar some power of police regulation also was conferred upon New York, as held in *Ferguson* v. *Ross*, need not be decided now. That New Jersey

retained the sovereignty, however, seems to be assumed in Article III (2), giving her exclusive jurisdiction over wharves, docks and improvements, made and "to be made," on the shore. This does not grant the right to make such improvements, but assumes it to exist. But the right would need the permission of New York, except on the hypothesis that New Jersey had sovereign power over the place.

The conclusion reached has the very powerful sanction of the conduct of the parties and of the existing condition of things. See *Moore* v. *McGuire*, 205 U. S. 214, 220. The decisions of the courts have been referred to. It was admitted at the bar that the record of transfers of such lands was kept in New Jersey, not in New York. New York never has attempted to tax the land, while New Jersey has levied more or less similar taxes for many years without dispute. See, *e. g. State* v. *Collector of Jersey City*, 4 Zabr. 108, 120; *State* v. *Jersey City*, 1 Dutcher, 530; *State* v. *Jersey City*, 6 Vroom, 178; *S. C.*, 7 Vroom, 471. New Jersey, not New York, regulates the improvements on the shore. Act of March 18, 1851, P. L. 1851, p. 335; Rev. 1877, p. 1240; Act of April 11, 1864, P. L. 1864, p. 681; March 31, 1869, P. L. 1869, p. 1017; 3 Gen. Stat. 2784, 2786; *New York, Lake Erie & Western R. R. Co.* v. *Hughes*, 46 N. J. 67. Without going into all the details that have been mentioned in the careful and satisfactory discussion of the question in the state courts we are of opinion that the land in question is subject to the sovereignty of the State of New Jersey, and that the exclusive jurisdiction given to the State of New York does not exclude the right of the sovereign power to tax.

Judgment affirmed.